DEVELOPMENT AGREEMENT

Between

CITY OF MIAMI BEACH, FLORIDA

(City)

and

AR&J SOBE, LLC

(Developer)

Dated as of _____, 2005

5th & ALTON PROJECT

Agenda Item R7F
Date 4-20-05

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LIST OF EXHIBITS

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of this _____ day of _____, 2005 (the "Effective Date"), by and between the **CITY OF MIAMI BEACH, FLORIDA** ("City"), a municipal corporation duly organized and existing under the laws of the State of Florida, and **AR&J SOBE, LLC**, a Florida limited liability company ("Developer"). As of the Effective Date, the sole members of the Developer are AP Sobe, LLC, wholly beneficially owned by Alan Potamkin, his family or a trust for the benefit of his family, and controlled by Alan Potamkin; RP Sobe,LLC, wholly beneficially owned by Robert Potamkin, his family or a trust for the benefit of his family, and controlled by Robert Potamkin; and Berkowitz Limited Partnership, wholly beneficially owned by Jeffrey Berkowitz, his family or a trust for the benefit of his family, and controlled by Jeffrey Berkowitz. More precise entity composition information for Developer will be furnished to the City Manager as soon it is available, but in any event by the Outside Date, as hereinafter defined.

RECITALS:

WHEREAS, Developer represents to City that Developer is the record and beneficial owner of certain parcels of real property located in the City of Miami Beach, Miami-Dade County, Florida, legally described on **Exhibit "A"** attached hereto and made a part hereof (title evidence will be furnished to the City which confirms this at the time specified in Section 2.6(d)(vi) below); and

WHEREAS, City is the holder of a public right-of-way easement to the "Alley", as hereinafter defined (said Exhibit "A" property and the Alley are collectively referred to as the "Land", which Land is bordered by 5th Street, 6th Street, Alton Road and Lenox Avenue); and

WHEREAS, on June 7, 2000, the City Commission adopted Resolution No. 2000-23963 designating the Land a Brownfield Area, to promote the environmental restoration and economic redevelopment of the area; and

WHEREAS, Developer intends to construct on the Land a multi-level commercial building to be used for grocery/retail/office/restaurant space and its appurtenances (the "Retail Space") and a parking garage (defined below as Transit Facility); and

WHEREAS, Developer shall convey to the City subject to the terms specified in this Development Agreement in fee simple several condominium units which in the aggregate include 535 of the parking spaces within the Transit Facility (said 535 spaces are defined below as the City Spaces, consisting of the "City Supermarket Spaces" and the "City Non-Supermarket Spaces", each of which shall be one or more separate units) and the "common areas" (including an equitable allocation of the Land) of the Transit Facility (said "common areas" shall be deemed part of the City Spaces for purposes of this Agreement) and one or more other condominium unit(s) which contains other "Transit Elements" (as hereafter defined), to the extent constituting real property interests (signage, furniture and any other non-real estate components, if any, of the Transit Facility will not be part of the condominium, although they will be utilized for the benefit of the condominium) and excluding the Transit Facility Dedication Area which shall not be part

of the condominium but shall be conveyed to the City as provided elsewhere in this Agreement. Developer shall retain fee simple title to one or more condominium units which include in the aggregate the Retail Space as well as the rest of the Transit Facility, and the "common areas" (including an equitable allocation of the Land) of the Project not conveyed to the City (said "common areas" shall be a part of the Retail Space for purposes of this Agreement), including all parking spaces other than the City Spaces (defined below as the Developer Spaces); and

WHEREAS, the Transit Facility will be operated as an integrated facility, with City being responsible for parking control and certain other duties of the operation thereof and Developer being responsible for the maintenance, repair, insurance, paying taxes, and security; and

WHEREAS, City and Developer have agreed that the Developer shall execute and record a Declaration of Condominium (the "Declaration") for the Property in a form approved by the City Manager (which approval will not be unreasonably withheld so long as the terms are consistent with this Agreement, including its Exhibits), at the time and subject to the terms specified in this Development Agreement, containing the essential terms set forth in **Exhibit "E"** attached hereto and such other provisions as City and Developer shall mutually and reasonably agree upon; and

WHEREAS, the Parties have negotiated this Development Agreement, setting forth the City's and Developer's respective rights and responsibilities with regard to the development, design, construction, ownership and operation of the Project.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

For all purposes of this Agreement the terms defined in this Article 1 shall have the following meanings:

"**Affiliate**" or "**Affiliates**" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For purposes hereof, the term "**control**" (including the terms "**controlled by**" and "**under common control with**") shall mean the possession of a Controlling Interest. Unless the context otherwise requires, any reference to Affiliate in this Agreement shall be deemed to refer to an Affiliate of Developer.

"**Alley**" means that certain parcel of property subject to a right-of-way easement held by the City containing approximately 7,800 square feet and legally described on **Exhibit "K."**

"**Architect**" means a person or firm licensed to operate as an architect in Miami-Dade County, Florida and who is designated by Developer as the architect for the Project and approved by the City Manager with respect to the Transit Facility (which approval shall not be

unreasonably withheld and is deemed given in respect of Robin Bosco Architects and Planners, Inc. and STA Architectural Group).

"**Brownfield Redevelopment Act**" means the Florida Brownfield Redevelopment Act, Section 376.77, et. seq., Florida Statutes (1997).

"**Building Permit**" means a "full building permit" as such term is defined in the Land Development Regulations, issued by the Building Department of the City, which allows buildings or structures to be erected, constructed, altered, moved, converted, extended or enlarged for any purpose, in conformity with applicable codes and ordinances.

"**Business Day**" or "**business day**" means a day other than Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed.

"**City**" means the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida.

"**City Code**" means the Code of the City of Miami Beach, Florida, as amended through the date hereof and as hereafter amended to the extent permitted herein or by applicable law.

"**City Commission**" means the Mayor and City Commission of the City of Miami Beach, Florida, the governing body of the City, or any successor commission, board or body in which the general legislative power of the City shall be vested.

"**City Elevator**" means the elevator and elevator bank to be conveyed to the City, located at the northwest corner of the Improvements and comprising a part of the Transit Elements (which will stop at all floors of the Transit Facility), together with an easement from the Transit Facility Dedication Area to the City Elevator for use by the general public for ingress and egress between such areas. Developer shall perform routine day to day maintenance of the City Elevator at its cost (such as sweeping and cleaning). Developer shall perform all other maintenance, repairs and replacement of the City Elevator, including obtaining a service contract for maintenance that is subject to City's reasonable approval, at the City's cost, based on a budget reasonably approved by the City and subject to annual reconciliation, and this obligation shall survive any termination of this Agreement.

"**City Improvements**" means the City Spaces and the other Transit Elements. The City Improvements are to be constructed by Developer as part of the Project.

"**City Manager**" means the chief administrative officer of the City or his or her designee.

"**City Spaces**" means the 535 parking spaces within the Transit Facility that are to be conveyed to the City and located substantially as shown on **Exhibit "I"** hereto. The City Spaces shall be comprised of the "**City Supermarket Spaces**" and "**City Non-Supermarket Spaces**", as defined below.

"**City Non-Supermarket Spaces**" shall mean all of the City Spaces less the City Supermarket Spaces.

"**City Supermarket Spaces**" shall mean that portion of the City Spaces equal to 97 parking spaces for the contemplated supermarket user.

"**City's Consultant**" means such Person as City may designate in writing to Developer from time to time.

"**City's Transit Facility Contribution**" shall mean approximately $16,395.03 per parking space (being calculated by taking $8,771,340 and dividing same by the actual number of City Spaces) constituting the City Spaces plus an additional sum equal to the actual Hard Costs and Soft Costs incurred by Developer for the City Elevator plus an additional sum equal to the actual Hard Costs and Soft Costs incurred by Developer for the Transit Facility Dedication Area Finishes (but in no event to exceed $356,187.60 for the City Elevator and $118,204.80 for the Transit Facility Dedication Area Finishes) plus the additional sum of $333,333 for the Transit Facility Dedication Area, all of which shall be disbursed by City pursuant to Section 6.2 of this Agreement.

"**Commence Construction**" or "**Commencement of Construction**" means the commencement of major work (such as installing pilings or pouring foundations) for construction of the Project in accordance with the Plans and Specifications. Any and all preliminary site work (including, without limitation, any environmental re-mediation and ancillary demolition or site preparation work, including installation of forms for foundations) shall not be deemed to be Commencement of Construction.

"**Completion Deadline**" means the date that is the earlier of (a) twenty-four (24) months following the Construction Commencement Date, or (b) September 1, 2007, both subject to a day for day extension by reason of Unavoidable Delays.

"**Comprehensive Plan**" means the Comprehensive Plan that the City adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163, Part II, Florida Statutes.

"**Concurrency Requirements**" has the meaning provided in Section 2.4(b).

"**Consenting Party**" has the meaning provided in Section 18.2 (c)(i).

"**Construction of the Project**" means the construction of all or any portion of the Project on the Land.

"**Construction Agreement(s)**" means any general contractor's agreement, architect's agreement, engineer's agreement, or any other agreement for the provision of services, labor, materials or supplies entered into with respect to the Construction of the Project, as the same may be amended or otherwise modified from time to time.

"**Construction Commencement Date**" has the meaning provided in Section 2.7.

"**Construction Work**" means any construction work performed under any provision of this Agreement and/or the Construction Agreements with respect to the Construction of the Project.

"**Contractor**" means any contractor, subcontractor, supplier, vendor or materialman supplying services or goods in connection with the Construction of the Project.

"**Controlling Interest**" means the power to direct the management and decisions (both major decisions and day-to-day operational decisions) of any Person.

"**Default**" means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Agreement) constitute, an Event of Default.

"**Default Date**" means the date that is twenty-four (24) months and one day after the Construction Commencement Date or September 2, 2007, whichever occurs first, but subject to a day for day extension in each case for delays due to Unavoidable Delays.

"**Default Notice**" has the meaning provided in Section 17.1 (a).

"**Design Review Board**" or "**DRB**" means the Design Review Board of the City created and established pursuant to the Land Development Regulations, or any board or body which may succeed to its function.

"**Developer**" means AR&J Sobe, LLC, a Florida limited liability company.

"**Developer Improvements**" means any building (including footings and foundations), building equipment and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefor, except for the City Improvements which shall be constructed upon the Land by Developer but owned by the City.

"**Developer Spaces**" means all parking spaces (currently contemplated to be approximately 546) located within the Transit Facility except for the City Spaces, and located substantially as shown on **Exhibit "I"** hereto. The Developer Spaces shall include a portion of the City Code required parking spaces for the contemplated supermarket user.

"**Development Agreement**" (or this "**Agreement**") means collectively, this Development Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the parties.

"**Development Agreement Act**" means the Florida Local Government Development Agreement Act, Section 163.3220, et. seq., Florida Statutes (1998), as may be amended.

"**Development Approval**" means any zoning, rezoning, conditional use special exception, variance or subdivision approval, concurrency approval under Section 163.3180, Florida Statutes, or any other official action of local government having the effect of approving development of land.

"**Development Arbitrator**" shall have the meaning provided in Section 19.1 (j).

"**Development Dispute**" has the meaning provided in Section 3.4.

"**Development Site**" means the Land.

"**Effective Date**" has the meaning provided in the preamble of this Agreement.

"**Event of Default**" has the meaning provided in Section 17.1.

"**Excess Transit Facility Costs**" means those costs that shall be the sole responsibility of the Developer as that term is used in Section 6.2.1 (ii).

"**Fair Market Value**" means the fair market value of the property or interest being valued as jointly agreed to by City and Developer or, if they cannot agree for any reason within thirty (30) days, as determined by an appraiser mutually acceptable to City and Developer (which shall be designated within fifteen (15) days after expiration of the aforestated thirty (30) day period or it shall be presumed that they could not agree) or, if they cannot agree on a single appraiser for any reason, each shall designate an appraiser within fifteen (15) days thereafter (and if either does not, the appraiser selected shall be the sole appraiser) and the appraisers so designated shall select a third appraiser (within fifteen (15) days of their selection). Each appraiser shall be a licensed M.A.I. appraiser having no less than 10 years experience in appraising facilities similar to the property or interest being valued in the vicinity of the Property. Fair Market Value shall be determined assuming title and environmental condition will be in the condition in which the party conveying is obligated to convey as provided in this Development Agreement, but shall not take into account any restrictions, use rights, limitations or other factors peculiar to the Project or to the property or interest being valued that might affect value (it being the intent that these latter factors be considered through the discount (hereinafter defined as the "Fraction") by which Fair Market Value is multiplied in various places in this Agreement).

"**Fees**" has the meaning provided in Section 6.3 (a).

"**Fraction**" has the meaing set forth in the Declaration.

"**FTA**" means the Federal Transit Administration, an operating division of the U.S. Department of Transportation.

"**FTA Master Agreement**" means Federal Transit Administration Master Agreement, FTA MA (10) between the City and FTA, dated October 1, 2003, a copy of which was previously furnished to Developer.

"**FTA Recipient**" means the entity that receives federal assistance directly from FTA, as the legal entity that is designated the Recipient in the Grant Agreement or Cooperative Agreement with FTA.

"**FTA Requirements**" means requirements imposed on the expenditure of FTA Funds including, but not limited to, those identified in the FTA Master Agreement.

"**Governmental Authority**" or "**Authorities**" means the United States of America, the State of Florida, Miami-Dade County, the City (in its governmental as opposed to proprietary capacity) and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or any owner, tenant or other occupant of, or over the Development Site or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Development Site, or any vault in or under the Development Site, or airspace over the Development Site.

"**Guarantors**" means Jeffrey Berkowitz, Alan Potamkin and Robert Potamkin, who shall each execute a Guaranty in accordance with the provisions of this Development Agreement.

"**Guaranty**" means a joint and several guaranty issued to the City (which shall be separate from any guaranty issued to Developer's construction lender) to be delivered by each of the Guarantors to City prior to any disbursement of the City's Transit Facility Contribution pursuant to which each Guarantor shall guaranty to the City the timely and lien free completion of the Project in accordance with the Plans and Specifications, this Development Agreement and all Requirements, and which shall be in form and substance substantially the same as set forth on **Exhibit D** attached hereto.

"**Hard Costs**" means costs paid by Developer to contractors, materialmen and suppliers for Construction of the Project.

"**Hearing**" has the meaning provided in Section 19.1 (b).

"**Historic Preservation Board**" or "**HPB**" means the Historic Preservation Board of the City created and established pursuant to the Land Development Regulations or any board or body which may succeed to its functions.

"**Improvements**" means the Developer Improvements, the City Improvements and all improvements located on the Land at any point in time.

"**Institutional Lender**" means a bank, savings and loan association, insurance company, an agency of the United States Government, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), or any other lender generally recognized as an institutional lender, holding a mortgage, lien or other security interest on the Property or a portion thereof.

"**Joint Board**" means the Joint Historic Preservation and Design Review Board created and established pursuant to the Land Use Regulations or any board or body which may succeed to its functions.

"**Land**" has the meaning set forth in the first Recital.

"**Land Development Regulations**" means Subpart B (Chapters 114 through 142) of the Code of the City of Miami Beach, Florida, as the same was in effect as of the date of this Development Agreement.

"**Loan Documents**" means, collectively, any loan agreement, promissory note, mortgage, guaranty or other document evidencing or securing a loan secured by, among other collateral, Developer's interest in the Land or Property.

"**Mortgagee**" means the holder of a Mortgage.

"**Notice**" has the meaning provided in Section 18.1 (a).

"**Notice of Failure to Cure**" has the meaning provided in Section 10.1 (a).

"**Outside Date**" means the date which is eighteen (18) months after the Effective Date, or the Construction Commencement Date, whichever shall first occur.

"**Parties**" means the Developer and the City, collectively.

"**Party**" means the Developer or the City.

"**Payment and Performance Bond**" has the meaning provided in Section 2.6 (c).

"**Permits and Approvals**" shall mean any and all permits and approvals required to be issued by Governmental Authorities in connection with the Construction of the Project, including to the extent applicable, without limitation, the City of Miami Beach building permits, the approvals of the City of Miami Beach Design Review Board, the City of Miami Beach Historic Preservation Board, the City of Miami Beach Planning Board, the City of Miami Beach Board of Adjustment, the Miami-Dade County Department of Environmental Resources Management permits, the Florida Department of Environmental Protection permit, any other permits and/or approvals required by any Governmental Authorities and any utility access agreements with all applicable utility companies.

"**Permitted Exceptions**" means the matters set forth on **Exhibit "F"** hereto and any other matters hereafter imposed on the Property or the Transit Facility Dedication Area or any portion thereof by requirement of the City or with the consent of the City Manager, which consent will not be unreasonably withheld, delayed or conditioned so long as the City Improvements and the Transit Facility Dedication Area shall not be materially and adversely affected.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"**Planning Board**" or "**PB**" means the Planning Board of the City created and established pursuant to the Land Development Regulations, or any board or body which may succeed to its functions.

"**Plans and Specifications**" means the final plans and specifications for the Project, including, foundation, structural, electrical, plumbing and HVAC plans and such other plans and

specifications customarily required to obtain a full building permit, each as prepared in accordance with this Agreement and approved by City in both its governmental capacity and its proprietary capacity, as the same may be modified from time to time in accordance with the provisions of this Agreement.

"**Project**" means the Land and the City Improvements and the Developer Improvements to be constructed by Developer thereon, which shall include, without limitation, the following: a mixed use project containing approximately 179,000 square feet of commercial/retail/office/restaurant space and a parking garage containing approximately 1081 parking spaces, and which shall be substantially as depicted on the Project Concept Plan. The Project includes the Retail Space and the Transit Facility. At such time as Substantial Completion has been achieved, the term "Project" shall mean the Land and all Improvements which have been constructed thereon and shall further include all alterations and additions thereafter made. Notwithstanding the foregoing, if this Agreement is terminated, for purposes of determining whether or not the "Conditions", as hereinafter defined, have been satisfied, the Project may, at Developer's sole option, be modified to eliminate the City Elevator (unless City elects to require and pay for same in accordance with the Vacation Agreement and Vacation Resolution) and all or a portion of that parking which is in excess of City Code required parking.

"**Project Concept Plan**" means the concept plan for the Project attached hereto as **Exhibit "J"** hereto as may be modified in accordance with this Agreement.

"**Project Construction Costs**" means all Hard Costs and Soft Costs of construction incurred in connection with the Construction of the Project.

"**Property**" means the Land and all Improvements from time to time located thereon, together with all easements, development entitlements, utility allocations and other benefits appurtenant thereto.

"**Recognized Mortgagee**" means an Institutional Lender who is the holder of a mortgage and who has notified City that it is a Recognized Mortgagee and provided an address for notices.

"**Requirements**" has the meaning provided in Section 13.1 (b).

"**Soft Costs**" means, all out-of-pocket costs incurred by Developer to third parties (but, if any such third parties are affiliated with Developer, only to the extent that such services are necessary for the Project and only to the extent of the amount that would reasonably be payable in an arms length transaction if the third party were unrelated) for designing, planning, financing and managing Construction of the Project, other than Hard Costs.

"**Substantial Completion**" or "**Substantially Complete**" or "**Substantially Completed**" means, with respect to the Project, that (1) it shall have been completed substantially in accordance with the Plans and Specifications, (2) the certificate of the Architect described in Section 2.8 (b)(i) shall have been obtained, and (3) the City Improvements, the Developer Improvements and all other Improvements constituting a part of the Project shall have been issued temporary or permanent certificates of occupancy, or their equivalent.

"**Term**" means the period commencing on the Effective Date and, unless sooner terminated as provided herein, expiring on the issuance of a final certificate of occupancy and the completion of all remaining punch list items with respect to completion of the Project, payment by City to Developer of all amounts owed to Developer under this Agreement, conveyance to City of the City Spaces and City Elevator, and dedication to the City of the Transit Facility Dedication Area, all in accordance with the terms of this Agreement, subject, however, to survival of any provisions of this Agreement that are expressly stated herein or intended by their terms to survive such expiration or termination.

"**Transit Elements**" means and includes collectively (a) the City Non-Supermarket Spaces, (b) the City Elevator; (c) the Transit Facility Dedication Area; and (d) signage for the Transit Facility.

"**Transit Facility**" means a parking garage which is part of the Project and which contains the City Spaces, certain other Transit Elements and the Developer Spaces (but not the Transit Facility Dedication Area) and all ramps, elevators, and stairways located within the parking garage and serving the parking garage.

"**Transit Facility Dedication Area**" means the area at the northwest corner of the Property that is to be dedicated to the City for a mass transit intermodal stop pedestrian waiting area , the legal description of which will be prepared prior to conveyance to reflect the cross-hatched area noted and labeled on **Exhibit "B"** attached hereto, but only between the height of street grade and approximately 11 feet above street grade (it being understood and agreed that Developer shall retain the portions below grade for underground footings, foundations, utilities and the like, and shall retain the portions above approximately 11 feet for improvements to be located over the Transit Facility Dedication Area). Anything in this Development Agreement to the contrary notwithstanding, the Transit Facility Dedication Area shall not be part of the Transit Facility, the Property or the Project, but shall be a Transit Element which will be dedicated for a mass transit intermodal stop pedestrian waiting area at the time set forth in this Development Agreement. Developer shall not be required to comply with FTA Requirements in respect of this area if such requirements (when aggregated with the FTA Requirement for the balance of the Project) are more costly to comply with than what is contained in the Project Concept Plan unless City, at its option, elects to pay for the excess costs (except that Developer shall comply with Davis Bacon Act and shall, consistent with the City's FTA approved DBE plan, use reasonable efforts to comply with the DBE requirements of the FTA Master Agreement based on up to 10% of an assumed $9,500,000 City's Transit Facility Contribution (but in no event less than 5% of an assumed $9,500,000 City's Transit Facility Contribution) at no additional cost to City, and Developer shall also comply with any other requirements of the FTA Master Agreement at the City's request and at the City's cost, and further provided, in respect of all FTA Requirements, they are reasonably capable of being implemented without unusual delay and without materially changing the character of the Project). Anything in this Agreement to the contrary notwithstanding, Developer shall not be obligated to acquire or convey any land other than the Land or other than as contemplated hereby. Developer shall install at its cost (but subject to payment by the City for the Transit Facility Dedication Area Finishes as provided for elsewhere in this Agreement) the curbing, pavement, directional signage (to direct people into the Transit Facility) and building mounted lighting for the Transit Facility Dedicated Area and shall, subject to the immediately preceding sentence, comply with all Requirements pertaining to

construction of the Transit Facility Dedication Area. Developer shall not be obligated to install transit related signage, furniture (such as benches and waste containers) or similar items, unless requested by and paid for by City without contribution by Developer (and if installed, City shall maintain, repair and, when required, replace (or at City's option remove) same, which obligation shall survive termination of this Agreement if the Transit Facility Dedication Area has been conveyed to City).

"**Transit Facility Dedication Area Finishes**" means the improvements noted in item 2 of the Schedule of Estimated Elevator /Bus Stop Costs attached hereto as **Exhibit "O"**. Developer shall perform routine day to day maintenance of the Transit Facility Dedication Area Finishes at its cost (such as sweeping and cleaning). Developer shall perform all other maintenance, repairs and replacement of the Transit Facility Dedication Area Finishes at the City's cost, based on a budget reasonably approved by the City and subject to annual reconciliation, and this obligation shall survive and termination of this Agreement.

"**Unavoidable Delays**" means delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, catastrophic weather conditions, eminent domain, a court order which actually causes a delay (unless resulting from disputes between or among the party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging party or Affiliates (or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging party), unusual permitting or inspection delay, or another cause beyond such party's control or which, if susceptible to control by such party, shall be beyond the reasonable control of such party. Unavoidable Delays shall include, in the case of a Recognized Mortgagee (but not in the case of Developer), the time reasonably necessary to foreclose its mortgage (but only if and to the extent that ownership and/or possession of the Property is required in order for the Recognized Mortgagee to perform or comply with any of Developer's obligations hereunder). Such party shall use reasonable good faith efforts to provide notice to the other party not later than ten (10) days after such party knows of the occurrence of an Unavoidable Delay; provided, however, that either party's failure to notify the other of the occurrence of an event constituting an Unavoidable Delay within such ten (10) day period shall not alter, detract from or negate its character as an Unavoidable Delay or otherwise result in the loss of any benefit or right granted to the delayed party under this Development Agreement. In no event shall (i) any party's financial condition or inability to fund or obtain funding or financing constitute an Unavoidable Delay with respect to such party, and (ii) any delay arising from a party's (or its Affiliate's) default under this Development Agreement or any of the Project Agreements constitute an Unavoidable Delay with respect to such party's obligations hereunder. The times for performance set forth in this Development Agreement (other than for monetary obligations of a party) shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Development Agreement. Notwithstanding the foregoing, City's failure to pay when due City's Transit Facility Contribution in accordance with the terms of this Development Agreement shall, at Developer's option, be an Unavoidable Delay. Developer shall from time to time upon request of the City provide to the City Developer's then current construction time line schedule and shall advise as to whether any then known Unavoidable Delays have occurred and the nature and extent thereof.

ARTICLE 2

CONSTRUCTION

Section 2.1 Consistency with City's Comprehensive Plan and Zoning Regulations.

2.1.1 The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Development Agreement dealing with the Land are consistent with the City's adopted Comprehensive Plan and Land Development Regulations, subject to the Developer's obtaining all applicable Requirements, Permits and Approvals.

Section 2.2 Project Concept Plan Approval.

Developer's Project Concept Plan, which includes but is not limited to showing the layout and siting of the Project, including but not limited to all buildings and structures, streetscape, infrastructure improvements and other improvements and appurtenances proposed to be developed upon the Development Site, is herein submitted simultaneously with the submission of this Development Agreement for approval by the City Commission, and attached as Exhibit J hereto. Should the City Commission fail to approve the Project Concept Plan, which shall be by way of the City Commission failing to approve this Development Agreement--approval of this Development Agreement shall be deemed approval of the Project Concept Plan--or, if approved, if the Projecxt Concept Plan does not become final and unappealable, then this Development Agreement shall be of no force or effect, and each Party shall bear its own costs and expenses incurred in connection with this Development Agreement and neither Party shall have any further liability to the other (except for matters, if any, that expressly survive termination of this Development Agreement).

Section 2.3 Design of the Project.

Developer shall be solely responsible for the design of the Project, but such design shall be substantially in accordance with the design created by Developer's Architect ("Project Design") as reflected on the approved Project Concept Plan. Design of the Project, including the City Spaces and the other Transit Elements, shall be at the sole cost and expense of Developer. The Parties acknowledge that final, non-appealable approvals of the Project by the DRB and the HPB have been obtained.

Section 2.4 Public Facilities and Concurrency; Brownfields Benefits.

(a) Developer anticipates that (i) the Project will be served by those roadway transportation facilities currently in existence as provided by state, county and local roadways, (ii) the Project will be served by public transportation facilities currently in existence, including those provided by Miami-Dade County, the City, and other governmental entities as may presently operate public transportation services within the City; (iii) the sanitary sewer, solid waste, drainage, and potable water services for the proposed Project are to be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, and the City; and (iv) the Project will be serviced to the extent that available capacity exists by any and all public facilities, as such are defined in Section 163.3221(12), Florida Statutes (1997), and as such are described in the City's

Comprehensive Plan, specifically including, but not limited to, those facilities described in the Infrastructure Element and Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the Planning, Design and Historic Preservation Department of the City of Miami Beach. The foregoing, however, shall not be deemed to be an approval of, nor shall it be deemed to relieve Developer of, the obligation to comply with, Section 163.3180, Florida Statutes (1997), and City has made no determination or representation with respect to any such matters.

(b) Developer shall be responsible for obtaining all land use permits, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (1997), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, and parks and recreation (the "Concurrency Requirements"). Developer shall, within twenty-four (24) weeks after the Effective Date, apply to the appropriate Governmental Authorities for satisfaction of all applicable Concurrency Requirements, and shall thereafter diligently and in good faith pursue such letters or other evidence that the Project meets all applicable Concurrency Requirements.

(c) The Transit Facility shall be available for use as a public municipal transit facility. Developer may pursue and retain solely for its own account, except as and to the extent provided to the contrary in Article 20, any rights or benefits available under the Miami Beach City Commission Resolution No. 2000-23963, the Brownfield Site Rehabilitation Agreement between A&R Sobe, LLC and Miami-Dade County and/or under the Brownfield Redevelopment Act as they pertain to the Project.

Section 2.5 Plans and Specifications.

(a) Developer has submitted a complete application, consistent with the Project Concept Plan, for approval of the Project to DRB and the HPB or Joint Board, which application the Parties acknowledge has received final and unappealable approval. Upon receipt of approval of the Project Concept Plan and this Agreement by the City Commission, Developer shall prepare Plans and Specifications for construction of the Project, as approved by the DRB, and/or the HPB, and/or Joint Board, as applicable. The Plans and Specifications shall be submitted for a Building Permit within thirty-two (32) weeks from the date on which the City Commission approves the Project Concept Plan and this Development Agreement, and the approvals become final and non-appealable.

(b) Developer shall pursue approval by the City of the Plans and Specifications diligently and in good faith. City (in its proprietary capacity) shall cooperate, but at no cost to City, with all reasonable requests of Developer in respect thereof.

Section 2.6 Conditions Precedent to Developer's Commencement of Construction of the Project.

The following conditions precedent are intended for the benefit of City and shall not be modified or waived except by written instrument executed by the City Manager:

(a) Subject to Section 2.6 (c), Developer shall not Commence Construction of the Project unless and until Developer shall have obtained and delivered to City's Consultant

copies of all Permits and Approvals required to Commence Construction, all of which shall be consistent with the approved Project Concept Plan and the Plans and Specifications unless modified by Developer and approved by City in its proprietary capacity in accordance with the provisions of this Agreement.

(b) City (solely in its capacity as the owner or future owner of a portion of the Transit Facility and the Transit Elements and not in its governmental capacity) shall reasonably cooperate, but at no cost or liability to City, with Developer in obtaining the Permits and Approvals and any necessary utility access agreements, shall sign any application reasonably made by Developer which is required in order to obtain such Permits and Approvals and utility access agreements and shall provide Developer with any information and/or documentation not otherwise reasonably available to Developer (if readily available to City and City locates them in its files) which is necessary to procure such Permits and Approvals and utility access agreements. Any such accommodation by City shall be without prejudice to, and shall not constitute a waiver of, City's rights to exercise its discretion in connection with its governmental functions and shall be without warranty or representation.

(c) Prior to Commencement of Construction of the Project, Developer shall cause the General Contractor to furnish to City a payment and performance bond (the "Payment and Performance Bond") in a form reasonably acceptable to City, issued by a surety listed in the most recent United States Department of Treasury listing of approved sureties or otherwise reasonably acceptable to City Manager (if Developer's Institutional Lender providing construction loan financing approves the surety, City shall be deemed to have done so), guaranteeing the payment and performance of the General Contractor under a guaranteed maximum price contract for the Construction of the Project. City may accept, in its sole and absolute discretion, for any reason and/or for no reason whatsoever, a completion guarantee from the General Contractor, together with bonds for each subcontractor whose subcontract exceeds $50,000, in substitution for such Payment and Performance Bond. City shall be named (jointly with any Recognized Mortgagee, but the lender shall have first opportunity to complete) as a dual obligee under the Payment and Performance Bond.

(d) Prior to Commencement of Construction of the Project and prior to any disbursement of any portion of the City's Transit Facility Contribution (except for the funds earmarked for the Transit Facility Dedication Area and the Transit Facility Dedication Area Finishes, which shall be funded as provided in this Agreement (anything in the Vacation Resolution and Vacation Agreement described in Section 6.2.1(iv) to the contrary notwithstanding) and none of the following conditions, other than (vi), shall apply to said funding), (i) Developer shall have obtained the written commitment of the Institutional Lender providing construction loan financing for the Project and any other then lenders for the Project (in form and substance reasonably acceptable to the City Manager) to the fee simple conveyance to the City of the condominium unit(s) comprising the City Spaces, the City Elevator and the other Transit Elements (excluding the Transit Facility Dedication Area, which shall be dedicated at the time and in the manner provided for herein), subject only to the Permitted Exceptions (including, without limitation, free and clear of such lenders' financing and mortgage and other security interests), upon Substantial Completion (provided this Agreement has not previously been terminated and payment has been made to the City to repay the City's Transit Facility Contribution and any other amount owed to it as a result of such termination as provided in this

Agreement); (ii) Developer shall have completed its construction loan closing with an Institutional Lender for the Project, and in connection therewith the Institutional Lender shall have entered into an agreement with City pursuant to which the Institutional Lender shall recognize and agree that its rights are subject and subordinate to this Agreement and shall agree (which agreement will run with the Property and be binding on successors in title, in form and substance reasonably acceptable to the City Manager) that prior to commencement of foreclosure proceedings of the Property or prior to the acceptance of a deed in lieu thereof, the Institutional Lender shall elect by written notice to City (provided this Agreement has not previously been terminated and payment has been made to the City to repay the City's Transit Facility Contribution and any other amount owed to it as a result of such termination as provided in this Agreement) either (X) to irrevocably and unconditionally cause the Project to be completed in accordance with this Agreement and fulfill Developer's remaining obligations under this Agreement (which obligation shall be joint and several with Developer and Guarantors) with reasonable dispatch upon the conclusion of foreclosure or the acceptance of a deed in lieu thereof (and the City shall honor this Agreement as a direct agreement between it and the Institutional Lender at foreclosure or deed in lieu in such case) or (Y) to repay to the City (which repayment shall be secured by lien rights that are not subject to being foreclosed in connection with a foreclosure by such Institutional Lender of its security for its loan) no later than 30 days after conclusion of foreclosure or the acceptance of a deed in lieu of foreclosure the full amount of the City's Transit Facility Contribution actually disbursed by the City (less the portion thereof allocated to the Transit Facility Dedication Area and the Transit Facility Dedication Area Finishes) together with interest thereon at the lesser of (A) the average yield on an annualized basis generated by investments actually made by the City in accordance with the City's Investment Policy and Procedure (designed to assure the preservation of principal, a copy of which has been furnished to Developer) during the like period of time or (B) simple interest at the rate of 4% per annum, in each case from the date of disbursement until the date repaid, whereupon (contemporaneously with receipt of which) City shall relinquish all interests in the Project other than the Transit Facility Dedication Area and this Agreement shall terminate (any failure by the Institutional Lender to provide written notice of its election prior to the institution of foreclosure proceedings or the acceptance of a deed in lieu of foreclosure shall be deemed the election of item (Y) unless otherwise mutually agreed to by the City and said Institutional Lender); (iii) Developer's construction lender (which shall be an Institutional Lender) shall have provided City with a recordable agreement that will run with the Property (and be superior to the lien of all mortgages) reasonably acceptable to the City Manager pursuant to which such lender agrees (provided this Agreement has not previously been terminated as provided in this Agreement) to the filing of the Declaration upon Substantial Completion (either as the developer thereunder (if it has acquired title) or through a mortgagee joinder), and agrees, promptly upon the filing of the Declaration to convey (if it is then the owner) and release from the lien of its mortgage (if it is then a mortgagee) the condominium unit(s) comprising the City Spaces, the City Elevator and the other Transit Elements (excluding the Transit Facility Dedication Area, which shall be conveyed at the time and in the manner as provided elsewhere in this Agreement); (iv) Guarantors shall have each executed and delivered to City the Guaranty; (v) the Transit Facility Dedication Area shall have been dedicated to the City, subject only to the Permitted Exceptions; (vi) Developer shall have provided a title insurance commitment evidencing its ownership of the Land, subject only to the Permitted Exceptions (and subject to vacation of the Alley, if the vacation has not then occurred), and a survey depicting the Land which reflects no

matters that are inconsistent with this Agreement or the transaction contemplated hereby (improvements that are contemplated to be demolished shall not be deemed inconsistent or objectionable); and (vii) all of the conditions of (a), (b) and (c) above shall have been satisfied. At the request of Developer's construction or other lender, City, Developer and Developer's construction or other Lender shall enter into a direct agreement memorializing the foregoing matters and such other matters as the City or such lender may reasonably request (and which, in the case of the City, are not inconsistent with the provisions of this Agreement), the form and substance of which shall be reasonably acceptable to the City Manager and such lender. The immediately preceding sentence and the provisions of (a) and (c) above shall apply, to the extent applicable, and be a condition precedent to any supplemental financing by another lender (other than Developer's construction lender) that will encumber the Property prior to conveyance to the City of the City Spaces and other Transit Elements (excluding the Transit Facility Dedication Area).

Section 2.7 Commencement and Completion of Construction of the Project.

Developer shall at its expense (a) Commence Construction on or before sixty (60) days after the later of (i) all Permits and Approvals necessary for the Commencement of Construction have been issued and Developer's construction loan has been closed (all of which Developer shall pursue diligently and in good faith), and (ii) all conditions precedent set forth in Section 2.6 have been satisfied; (b) thereafter continue to prosecute Construction of the Project with diligence and continuity to completion; and (c) achieve Substantial Completion of the entire Project on or before the Completion Deadline. Promptly after Commencement of Construction, City and Developer shall enter into an agreement acknowledging the date upon which Commencement of Construction occurred (the "Construction Commencement Date"). Subject to any right of Developer to terminate this Development Agreement as herein provided, if, after Developer has Commenced Construction, Developer fails to diligently prosecute Construction of the Project (subject to Unavoidable Delays), and such failure continues (subject to Unavoidable Delays) for thirty (30) consecutive days after Developer's receipt of notice of such failure, City shall, in addition to all of its other remedies under this Agreement or at law or in equity, have the right to seek such equitable relief (either mandatory or injunctive in nature, including specific performance) as may be necessary to cause diligent and continuous prosecution of Construction of the Project (subject to Unavoidable Delays) by Developer.

Section 2.8 Completion of Construction of the Project.

(a) Substantial Completion of the Project shall be accomplished in a diligent manner, and in any event by the Completion Deadline, and final completion of the Construction of the Project, including but not limited to completion of all punch-list items, shall be accomplished promptly and in a diligent manner thereafter, in each case in a good and workmanlike manner, in substantial accordance with the Plans and Specifications (with no material deviations except as expressly permitted herein), and in accordance with all applicable Requirements.

(b) Upon Substantial Completion of the Project, Developer shall furnish City the following:

(i) a certification of the Architect (certified to City on the standard AIA certification form) that it has examined the Plans and Specifications and that, in its professional judgment, Construction of the Project has been Substantially Completed substantially in accordance with the Plans and Specifications applicable thereto and, as constructed, the Improvements (including the City's Improvements and the Developer's Improvements) comply with all applicable Requirements.

(ii) final lien waivers in form and substance reasonably satisfactory to City from each contractor, subcontractor, supplier or materialman retained in connection with the Construction of the Project, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the Construction of the Project.

(iii) a complete set of signed and sealed as-built plans and a survey showing the Improvement(s) for which the Construction of the Project has been completed. City shall have an unrestricted license to use such as-built plans and survey (and prior to Commencement of Construction Developer shall provide to City the architect's written consent thereto) for any purpose related to the Development Site without paying any additional cost or compensation therefor;

(iv) a Contractor's Final Affidavit in form and substance reasonably satisfactory to the City Manager executed by the General Contractor (A) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of Developer in connection with the Construction of the Project have been paid in full for all work performed or materials supplied in connection with the Construction of the Project and (B) otherwise complying with all of the requirements for a final contractor's affidavit under the Florida Construction Lien Law, Chapter 713, Florida Statutes, as amended;

(v) evidence that the Declaration (in the form required by this Agreement) has been recorded in the Public Records of Miami-Dade County, Florida, subject only to the Permitted Exceptions and with all proper mortgagee joinders; and

(vi) a special warranty deed conveying the condominium units to be conveyed to the City pursuant to the terms of this Agreement (but including in any event the City Improvements, to the extent not previously conveyed), subject only to the Permitted Exceptions. City shall be liable for the payment of one half of any documentary stamp tax and/or surtax that may be payable in connection with said conveyance (but the Parties shall cooperate with each other to attempt to obtain a waiver or exemption, under the Brownfield Redevelopment Act or otherwise), regardless of whether or not the City is statutorily exempt (unless Developer is also exempt).

(c) Following Substantial Completion of the Project, Developer shall remain obligated to fully complete construction of the Project with diligence, notwithstanding conveyance to the City of the City Spaces and other Transit Elements prior thereto.

Section 2.9 Confirmation of Land Development Regulations.

The zoning district classification of the Land (including the Alley upon its vacation as contemplated by this Development Agreement) is and shall be CPS-2, as defined in the Land Development Regulations.

Section 2.10 Required Development Permits.

Developer shall be solely responsible for obtaining all final, non-appealable Development Approvals, as applicable. City (in its propriety capacity) shall cooperate, at no cost or liability to City, with all reasonable requests of Developer in respect thereof.

Section 2.11 Developer's Right of Termination.

Notwithstanding anything to the contrary contained herein, Developer shall have the right to be released from its liability and obligations and to terminate this Development Agreement by written notice to City delivered not later than the Outside Date if (a) changes to the Developer's Project Design, Project Concept Plan, the Plans and Specifications or any other aspect of the Project required by the DRB, HPB, PB, Joint Board, or any other Governmental Authority (including the City), render the Project economically unfeasible in the sole judgment of Developer, (b) the Project cannot meet Concurrency Requirements under Section 163.3180, Florida Statutes (1997), or the costs of concurrency mitigation, in the sole judgment of Developer, render the Project economically unfeasible, (c) Developer, after good faith efforts, has been unable to obtain any Development Approvals or a Building Permit for the Project pursuant to the Plans and Specifications, (d) after good faith efforts, Developer has not obtained lease commitments for at least 90% of the Retail Space of the Project or has not been able to arrange construction loan financing at market rates and terms, (e) federal, state, county or local funds or incentives sought by Developer pursuant to Article 20 herein are, in the sole judgment of Developer, inadequate, or (f) Developer in its sole discretion elects to terminate this Development Agreement for any reason. In the event of termination of this Development Agreement pursuant to this Section, each Party shall bear its own costs and expenses incurred in connection with this Development Agreement and neither Party shall have any further liability to the other except for any matters that expressly survive termination of this Development Agreement. The right of termination pursuant to this Section 2.11 shall expire and become void if not exercised by Developer prior to the Outside Date. Any termination under this Section shall not affect the rights and obligations of the Parties in respect of the Alley and Transit Facility Dedication Area which are governed by the Vacation Agreement and Vacation Resolution.

Section 2.12 City's Right of Termination.

Notwithstanding anything to the contrary contained herein, City shall have the right to be released from its liability and obligations and to terminate this Development Agreement if for any reason; (a) Developer has not obtained a Building Permit for the Project on or before the Outside Date; or (b) Developer has not Commenced Construction of the Project on or before September 1, 2006; or (c) City in its sole discretion determines that the Project and the public purposes to be derived from it render the Project unfeasible or unwarranted in light of the City's Transit Facility Contribution, and other provisions of this Agreement, or (d) Developer has not obtained the fully executed Grocery Lease required by Article 15 of this Agreement and delivered a copy thereof to City on or before the Outside Date; or (e) City in its sole discretion

elects not to proceed with this Project. In the event of termination of this Development Agreement pursuant to this Section 2.12, each Party shall bear its own costs and expenses incurred in connection with this Development Agreement and neither Party shall have any further liability to the other except for any matters that expressly survive termination of this Development Agreement. City's right to terminate this Agreement pursuant to subparagraphs (c) and (e) above shall expire and shall not thereafter be exercisable in the event City does not exercise its termination options within forty-five (45) days after Developer has provided its "Construction Application Notice" to City. "Developer's Construction Application Notice" shall mean written notice given by Developer to City (a) stating that either (i) Developer intends within 45 days thereafter to submit its loan application to a specific Institutional Lender for construction loan financing of the Project and to pay any required application fee or (ii) Developer intends within 45 days thereafter to submit its building permit application to the City for the Project; and (b) containing the following language in bold 12 point type (i.e. as reflected hereinafter in quotes) and in all capital letters "**CITY'S FAILURE TO EXERCISE ITS TERMINATION RIGHT UNDER 2.12(c) or 2.12(e) OF THE DEVELOPMENT AGREEMENT WITHIN FORTY-FIVE (45) DAYS OF THIS NOTICE WILL CONSTITUTE THE WAIVER OF CITY'S RIGHT TO EXERCISE CITY'S TERMINATION RIGHTS UNDER SAID SUBPARAGRAPHS.**" The right of termination pursuant to this Section 2.12 shall expire and become void if not sooner terminated as aforestated or exercised by City prior to the Outside Date. Any termination under this Section shall not affect the rights and obligations of the Parties in respect of the Alley and Transit Facility Dedication Area which are governed by the Vacation Agreement and Vacation Resolution.

ARTICLE 3

PLANS AND SPECIFICATIONS

Section 3.1 Approval and Modification of Plans and Specifications.

(a) In accordance with Section 2.6, and simultaneously with submitting its application for the required Building Permit, Developer shall prepare and submit to City (in its proprietary capacity) the Plans and Specifications, which Plans and Specifications shall be used to obtain the required Building Permit and shall be consistent with the approved Project Concept Plans. If such submitted Plans and Specifications are materially inconsistent with, or contain material modifications to, the Plans and Specifications as approved by the DRB and the HPB or Joint Board, if applicable, or with the approved Project Concept Plans, then such Plans and Specifications shall clearly indicate, by ballooning, highlighting, black-lining or describing in writing in sufficient detail in a memorandum accompanying such Plans and Specifications, all such modifications. Within ten (10) Business Days of its receipt of such Plans and Specifications, City shall notify Developer, in writing, describing, with specificity, the basis for such disapproval of any material inconsistencies or material modifications of which City disapproves between the proposed Plans and Specifications and the Plans and Specifications as approved by the DRB and HPB or Joint Board, if applicable, or the approved Project Concept Plans, it being agreed however, that if Developer has complied with Section 18.2 (c) hereof, City's failure to so notify Developer of its disapproval within such time period shall be deemed to constitute City's conclusive approval of such Plans and Specifications; provided, however,

that if City shall notify Developer within ten (10) Business Days following its receipt of Developer's request that the complexity of such changes necessitates an extension of such time period to complete City's review, such period shall be extended to the date which is reasonably and mutually agreed to by City and Developer, not to exceed thirty (30) days after City's receipt of the proposed inconsistencies or modifications; provided, further, however, that City shall not be responsible for, and shall not be deemed to have approved, any such material inconsistency or modification that is not indicated as required by this Section 3.1 (a). Notwithstanding anything to the contrary contained herein, City shall not object to any modifications which are necessitated to comply with Requirements and which do not have a material adverse affect upon the City Spaces or the Transit Elements. Otherwise, City shall be reasonable in considering any modifications that are the subject of this Section 3.1 (a).

(b) If Developer desires to materially modify previously approved Plans and Specifications, Developer shall submit any such modified Plans and Specifications to City for City's approval (in its proprietary capacity), but only to the extent they affect the Transit Facility or its operation. Such modified Plans and Specifications shall clearly indicate, by ballooning, highlighting, black-lining or describing in writing in sufficient detail in a memorandum accompanying such modified Plans and Specifications, all such proposed modifications to the Plans and Specifications. Within ten (10) Business Days of its receipt of the proposed modifications, City shall notify Developer in writing, with specificity of any material inconsistencies or material modifications of which City disapproves between the Plans and Specifications as modified and the Plans and Specifications previously approved by City, it being agreed however, that if Developer has complied with Section 18.2 (c) hereof, City's failure to so notify Developer of its disapproval during such time period shall be deemed to constitute City's conclusive approval of such Plans and Specifications; provided, however, that if City shall notify Developer within ten (10) Business Days following its receipt that any of the proposed modifications to the Plans and Specifications that the complexity of the proposed modifications necessitates an extension of such time period to complete City's review, such period shall be extended to the date which is reasonably and mutually agreed to by City and Developer, not to exceed thirty (30) days after City's receipt of the proposed modifications; provided, further, however, that City shall not be responsible for, and shall not be deemed to have approved, any such proposed modification that is not indicated as required by this Section 3.1 (b). Notwithstanding anything to the contrary contained herein, City shall not object to any modifications to the Plans and Specifications which are necessitated by Requirements and which do not have a material adverse affect on the City Spaces or the Transit Elements and shall not unreasonably withhold consent to other modifications.

(c) If City disapproves any material inconsistencies or material modification in the Plans and Specifications pursuant to Section 3.1 (a) above, or City disapproves any of the material modifications to or material inconsistencies in the Plans and Specifications pursuant to Section 3.1 (b) above, then Developer shall, at its election either: (x) submit City's disapproval to expedited arbitration pursuant to Section 3.4 and Section 19.1 as to the (i) materiality of the inconsistency or modification and/or (ii) the reasonableness of the disapproval or (y) within thirty (30) days after receiving City's disapproval notice, submit revised Plans and Specifications or a revised modification to the Plans and Specifications to meet City's objections, which revised Plans and Specifications or revised modification shall be reviewed as provided in Section 3.1 (a) or (b), as applicable.

(d) Nothing contained in this Section 3.1, however, shall relieve Developer from the obligation to obtain all necessary Approvals and Permits from Authorities, including City in its governmental capacity.

Section 3.2 Compliance with Requirements; Construction Standards.

(a) Notwithstanding anything to the contrary contained herein, the Plans and Specifications shall comply with all applicable Requirements and will be generally consistent with the approved Project Concept Plans subject, however, to any changes approved or deemed approved, by City. It is Developer's responsibility to assure such compliance. City's approval in accordance with this Section 3.2 of any Plans and Specifications shall be deemed to be a determination by City (in its proprietary capacity) that the Plans and Specifications so approved are in substantial conformity with the Developer's Project Design or are otherwise acceptable to City, but shall not be, and shall not be construed as being, or relied upon as, a determination that such Plans and Specifications comply with applicable Requirements, including, without limitation, any Requirements providing for the review and approval of the Plans and Specifications by any Governmental Authority including City (in its governmental capacity as opposed to its proprietary capacity).

(b) Construction of the Project shall be carried out pursuant to Plans and Specifications prepared by licensed architects and engineers, with controlled inspections conducted by a licensed architect or professional engineer or other professionals as required by applicable Requirements.

Section 3.3 Design and Décor.

Notwithstanding anything to the contrary contained in this Agreement, City (in its proprietary capacity) shall not have any approval rights with respect to matters of interior or exterior design and aesthetic decor of the Retail Space. Further, so long as Developer materially conforms with the Plans and Specifications, City (in its proprietary capacity) shall not have any approval rights with respect to matters of interior or exterior design and aesthetic decor of the Transit Facility, except as and to the extent specifically requiring City's consent under Section 3.1 of this Development Agreement or to the extent the quality standards or appearance for any portion of the Transit Facility are lower than, or materially different from, those for the Developer Spaces. Any City approval that may be required under the immediately preceding sentence shall not be unreasonably withheld, conditioned or delayed, and City shall be liable for any increased costs or costs associated with any delay resulting from the approval rights exercised by the City.

Section 3.4 Development Dispute.

(a) Any dispute or disagreement between City and Developer arising prior to Substantial Completion with respect to the matters described in Section 3.4 (b) (a "Development Dispute") shall be finally resolved in accordance with the provisions of Section 19.1.

(b) Any contention by Developer that City has unreasonably failed to approve or give its consent to any modifications to the Plans and Specifications pursuant to Section 2.5, Section 3.1 (a) or (b) or to any design and decor matters pursuant to Section 3.3, or any

contention by City that Developer is not complying with its obligations or responsibilities set forth in those sections shall be the subject of a Development Dispute pursuant to Section 3.4 (a) above.

ARTICLE 4

CITY PARTICIPATION

Section 4.1 City's Right to Use Field Personnel.

City reserves the right, at its sole cost and expense, to maintain one (1) on-site representative (from City's Consultant, City or another entity designated by City) at the Development Site to conduct inspections of the Development Site (provided, however, that City shall be entitled to maintain additional on-site representatives from time to time to the extent reasonably necessary to perform such inspections), and Developer agrees to provide access to the Development Site, including, without limitation, access to inspect the Construction Work, the preparation work and work in progress at the Development Site. No such inspection by the City's on-site representatives shall impose upon City responsibility or liability for any failure by Developer to observe any Requirements or safety practices in connection with such Construction Work or constitute an acceptance of any work which does not comply with any Requirements or the provisions of this Agreement, and no such inspection shall constitute an assumption by City of any responsibility or liability for the performance of Developer's obligations hereunder, nor any liability arising from the improper performance thereof. The City's on-site representatives shall not interfere with any Construction Work being performed at the Development Site, shall comply with all safety standards and other job-site rules and regulations of Developer and shall visit the site at their sole risk. City's on-site representatives are inspectors only. The on-site representatives shall make only such communications with Developer's construction manager(s) and the General Contractor (or, with the approval of, and in the presence of, the Developer's construction manager(s) or the General Contractor, the subcontractors or any other Person involved in the Construction of the Project) as are reasonably necessary to enable such on-site representatives to conduct their investigations, and in no event shall the on-site representatives give directions to such Persons. Developer shall endeavor to provide reasonable prior notice to City's on-site representatives of any regularly schedule construction meetings involving representatives of Developer, any general contractor, the Project Architect, and/or the Project engineer, and City's representatives shall be entitled to attend (but there shall be no obligation to reschedule any meeting to accommodate the schedule of City's on-site representatives). All expenses incurred by City's on-site representative shall be paid by City.

ARTICLE 5

MISCELLANEOUS CONSTRUCTION PROVISIONS

Section 5.1 Art in Public Places.

(a) Developer acknowledges having been advised that compliance with the City's Art in Public Places (AIPP) legislation, as codified in Chapter 82, Article VII, Sections 82-536 through 82-612 of the City Code, and as same is amended, is applicable to the Project.

(b) Developer shall request that, in consideration of Developer's providing the substantial art work depicted on the approved Project Concept Plan by world renowned local artist Romero Britto, and the Potamkin family's commitment to contribute to the City's Bass Museum, the City Commission approve a resolution confirming that the requirements of the AIPP legislation have been satisfied.

(c) In the event the City Commission determines that the AIPP legislation requirements are not satisfied by the Romero Britto artwork, and the Potamkin family's commitment to contribute to the Bass Museum, Developer shall have the right to terminate this Agreement by written notice to City not later than the Outside Date (as defined in Section 2.11) (and if Developer does not give notice of termination on or before such date, Developer shall be deemed to have waived such right of termination and shall not thereafter be entitled to terminate this Agreement pursuant to this Section 5.1).

Section 5.2 Prevailing Wage.

Developer shall pay all Persons employed by it with respect to Construction of the Project, without subsequent deduction or rebate unless expressly authorized by Requirements, not less than the relevant prevailing wage as prescribed by City of Miami Beach Ordinance No. 94-2960 (the City's Prevailing Wage Ordinance), but only to the extent the City's Prevailing Wage Ordinance is applicable to the construction of the Project. Developer further agrees to comply, and assure the compliance by the Contractor and any subcontractors with respect to Construction of the Project, with the applicable employee protection requirements identified in Section 24 of the FTA Master Agreement, to the extent applicable.

Section 5.3 FTA Requirements.

Developer recognizes that City may in its sole and absolute discretion pursue funding of the eligible portions of City's Transit Facility Contribution from the FTA or another funding source, although obtaining funding from any source is not a condition of this Development Agreement or City's obligations hereunder. Developer agrees to use reasonable and good faith efforts to comply with all currently effective FTA Requirements, including the requirements of the existing FTA Master Agreement, but only with respect to the construction, use and operation of the Transit Elements (and such obligations shall not terminate upon expiration of the Term (but shall terminate upon termination of this Agreement for any other reason) but shall remain in effect thereafter for as long as FTA requires). In the event that this Development Agreement requires the Developer to undertake responsibilities usually performed by the City, as the FTA Recipient, Developer agrees to use reasonable and good faith efforts to comply with all FTA Requirements and other requirements and responsibilities under federal law, regulation or directive, but only to the extent applicable to the Transit Elements (and City shall provide reasonable guidance and input to Developer in Developer's attempts to do so), and shall extend the FTA Requirements as applicable to any and all contractors and subcontractors on the Project, but only to the extent applicable to the Transit Elements. Notwithstanding the foregoing,

Developer shall not be required to comply with FTA Requirements if such requirements are more costly to comply with than what is contained in the Project Concept Plan unless City, at its option, elects to pay for the excess costs (except that Developer shall comply with Davis Bacon Act and shall, consistent with the City's FTA approved DBE plan, use reasonable efforts to comply with the DBE requirements of the FTA Master Agreement based on up to 10% of an assumed $9,500,000 City's Transit Facility Contribution (but in no event less than 5% of an assumed $9,500,000 City's Transit Facility Contribution) at no additional cost to City, and Developer shall also comply with any other requirements of the FTA Master Agreement at the City's request and at the City's cost, and further provided, in respect of all FTA Requirements, they are reasonably capable of being implemented without unusual delay and without materially changing the character of the Project). Any costs incurred by Developer in complying with the provisions of FTA that are the obligation of City shall be reimbursed to Developer by City within 30 days of invoicing, accompanied by reasonable substantiation. Anything in this Development Agreement to the contrary notwithstanding, in the event of a conflict between FTA Requirements and the provisions of this Development Agreement, the provisions of this Development Agreement shall govern.

Section 5.4 Construction Agreements.

(a) Required Clauses. All Construction Agreements which provide for the performance of labor on the Development Site shall include the following provisions (or language intended to accomplish the objectives specified below, which language is reasonably approved in advance by City):

(i) To the fullest extent permitted by law, Contractor shall and does hereby indemnify and hold harmless the City of Miami Beach, Florida (and any successor), and their respective elected and appointed officials (including the City's Mayor and City Commissioners), directors, officials, officers, shareholders, members, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, lessees, mortgagees, trustees, partners, principals, invitees and affiliates, from and against any and all liability, claims, demands, damages, losses, fines, penalties, expenses and costs of every kind and nature, including, without limitation, costs of suit and attorneys fees and disbursements (collectively, Expenses), resulting from or in any manner arising out of, in connection with or on account of: (1) any act, omission, fault or neglect of Contractor, or anyone employed by it in connection with the work or any phase thereof, or any of its agents, contractors, subcontractors, employees, invitees or licensees in connection with the work, or anyone for whose acts any of them may be liable, (2) claims of injury (including physical, emotional, economic or otherwise) to or disease, sickness or death of persons or damage to property (including, without limitation, loss of use resulting therefrom) occurring or resulting directly or indirectly from the work or any portion thereof or the activities of Contractor or anyone employed by it in connection with the work, or any portion thereof, or any of its respective agents, contractors, subcontractors, employees, invitees or licensees in connection with the work, or anyone for whose acts any of them may be liable, or (3) mechanics or materialmen's or other liens or claims (and all costs or expenses associated therewith) asserted, filed or arising out of the work or any phase thereof other than liens or claims arising out of Developer's failure to make the required payments properly due Contractor. In no event shall Contractor be able to seek or be entitled to consequential damages (including, without limitation, loss of profits or loss of business opportunity) for claims arising

under this contract. This indemnification obligation shall not be limited in any way by: (x) any limitation on the amount or type of damages, compensation or benefits payable to Contractor under worker's compensation acts, disability benefit acts or other employee benefit acts or other insurance provided for by this contract; or (y) the fact that the Expenses were caused in part by a party indemnified hereunder. The Contractor further agrees that this indemnification shall be made a part of all contracts and purchase orders with subcontractors or material suppliers. The indemnification agreement included in this contract is to be assumed by all subcontractors.

(ii) A provision which grants to Developer the right to assign to City, subject and subordinate to the rights of the Developer's Recognized Mortgagee, the contract and Developer's rights thereunder, at City's request, without the consent of the Contractor and without the City's thereby assuming any of the obligations of Developer under the contract occurring prior to such assignment and/or purchase order. City shall have the right to enforce the full and prompt performance by the Contractor of such contract.

(iii) Contractor agrees to comply with all laws and requirements applicable to Contractor and the Project, including, without limitation, the City's Prevailing Wage Ordinance, if such provision is applicable to construction of the Project, and the FTA Requirements.

(iv) Contractor expressly acknowledges and agrees that Contractor and all subcontractors, suppliers, materialmen and laborers are prohibited from filing liens against property of the City of Miami Beach, Florida, and nothing contained in the contract shall operate to waive such prohibition nor any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

(v) Unless and until the City of Miami Beach, Florida or its designee expressly assumes the obligations of Developer under this contract (and then only to the extent the same arise from and after such assumption), the City of Miami Beach, Florida, shall not be a party to this contract and will in no way be responsible to any party for any claims of any nature whatsoever arising or which may arise in connection with such contract.

(vi) Contractor hereby agrees that notwithstanding that Contractor performed work at the Development Site or any part thereof, the City of Miami Beach, Florida shall not be liable in any manner for payment or otherwise to Contractor in connection with the work performed at the Development Site, except to the extent the City of Miami Beach, Florida, expressly assumes the obligations of Developer hereunder (and then only to the extent such obligations arise from and after such assumption).

(vii) All warranties which are granted by Contractor and all subcontractors shall run to the benefit of City as third party beneficiary. Contractor and all subcontractors and suppliers agree, however, that Contractor and all subcontractors and suppliers shall look solely to the Developer and not to City for performance of all of Developer's obligations under the construction contracts and subcontracts.

(b) Developer shall use good faith efforts to include all of the foregoing provisions. If Developer is unable to negotiate inclusion of any of the foregoing provisions, or

doing so would materially and adversely impact the contract price, Developer may terminate this Agreement prior to the Outside Date (but not thereafter) unless City agrees to waive the applicable requirements.

Section 5.5 Demolition of the Development Site.

Except pursuant to that certain Historic Preservation Board Final Order No. 1345, approving a Certificate of Appropriateness, Developer shall not demolish any portion of the Development Site. Any demolition permitted hereunder shall be performed in accordance with all applicable Requirements.

Section 5.6 Construction Staging.

Construction Staging for the Project will be confined to the Development Site or another off-site location owned or controlled by Developer. Developer shall instruct all workers on the Development Site to park their vehicles at an off-site location, so as to not materially impact residents and other users of the neighboring residential areas. If necessary to avoid disruption to residential areas, the Parties shall agree upon one or more reasonable off-site locations.

ARTICLE 6

FINANCING OF PROJECT CONSTRUCTION AND DISBURSEMENT PROCEDURES

Section 6.1 Developer's Obligations.

Subject to Section 5.3 above, Developer shall provide all of the funds necessary to complete Construction of the Project except the City's Transit Facility Contribution to be funded by City. The City's Transit Facility Contribution shall be funded as set forth in Section 6.2.1.

Section 6.2 Disbursement of City's Transit Facility Contribution; Alley.

Developer shall design (consistent with the approved Project Concept Plans) and construct, subject to City's Transit Facility Contribution, as more particularly set forth in Section 6.2.1 below, the Project, including the Transit Facility and the other Transit Elements to be located on the Property, which Transit Facility shall be of sufficient capacity to accommodate approximately 1081 cars, and the Transit Facility Dedication Area.

6.2.1 City's Transit Facility Contribution is subject to the following:

(i) City will fund an amount equal to City's Transit Facility Contribution. Subject to Section 5.3 above and any other express provisions of this Agreement, City shall not be obligated to fund any other costs of the Transit Elements or any other Project Construction Costs.

(ii) In the event that costs of construction of the City Spaces and City Improvements exceed the City's Transit Facility Contribution for such item, Developer shall,

subject to Section 5.3 above and any other express provisions of this Agreement, be solely responsible for payment of, and shall pay, all excess costs ("Excess Transit Facility Costs"). Developer shall also be entitled to retain any savings. It is the intention and agreement of Developer and the City that the City's sole financial obligation with respect to the Project is, subject to Section 5.3 above and any other express provisions of this Agreement, to fund City's Transit Facility Contribution and that Developer shall be solely responsible for paying all other Hard Costs and Soft Costs of the Project.

(iii) City shall fund City's Transit Facility Contribution as follows:

(1) As to all amounts other than those allocated to the Transit Facility Dedication Area (but including those allocated to the Transit Facility Dedication Area Finishes), as construction progresses in accordance with **Exhibit "C"** hereto, anything in the Vacation Resolution and Vacation Agreement described n Section 6.2.1(iv) to the contrary notwithstanding;

(2) As to the amount allocated to the Transit Facility Dedication Area (but excluding those allocated to the Transit Facility Dedication Area Finishes), at the time of the dedication thereof to the City, which shall take place simultaneously with the Commencement of Construction and the issuance by the City Manager of the recordable instrument(s) stating that both Conditions provided for in (iv) below have occurred, such that no further reversion of the Alley to the City is possible. The form of the dedication shall be by deed, a copy of which is attached hereto as **Exhibit "M"**. This provision shall survive termination of this Agreement.

(iv) In accordance with the City's Requirements for Vacation of Alleys, Easements and City Rights-of-Way, as adopted on July 26, 1989 and the City's Sale or Lease of Public Property legislation, as codified in Chapter 82, Article II, Sections 82-37 through 82-39, City has vacated the Alley, subject, however, to possible reverter and/or reconveyance as provided in Resolution No. 2005-25827 adopted February 23, 2005 (the "Vacation Resolution") and the "Vacation Agreement" executed in furtherance thereof. The Alley shall revert to City, and Developer in confirmation thereof shall promptly upon written demand execute and deliver to City a Quit Claim Deed, subject to no liens or encumbrances other than the Permitted Exceptions, if the conditions (the "Conditions") specified in the Vacation Resolution and/or Vacation Agreement shall occur (City shall, promptly upon request of Developer, confirm, by recordable instrument signed by the City Manager, that these Conditions have been satisfied, if such be the case, and this obligation shall survive termination of this Agreement), in which event this Development Agreement shall terminate. The City agrees, simultaneously with the satisfaction of the Conditions, to allow the permanent removal, at no cost to Developer, of eight (8) metered on street parking spaces on the south side of 6th Street between Lenox Avenue and Alton Road, adjacent to the Project (the precise spaces to be reasonably agreed upon by the

Parties), to provide for transit and/or ancillary parking uses (ex. loading zone, handicapped parking, taxi zone) reasonably approved by the City, and this provision shall survive termination of this Agreement.

Simultaneously with the conveyance by Developer to City of the City Spaces, Developer and City will execute and record a restrictive covenant upon the Lands (or shall include appropriate provisions in the Declaration) which is consistent with the provisions of Section 15.2.

Except as provided above in respect of the Conditions, the Alley shall not revert and shall not be reconveyed, and the Transit Facility Dedication Area shall be dedicated and payment therefor be made by the City, even if this Agreement is terminated pursuant to Section 2.11 or 2.12 prior to Commencement of Construction or pursuant to any other provision of this Development Agreement, and these obligations shall survive termination. The foregoing shall not be construed as allowing termination under Sections 2.11 or 2.12 after Commencement of Construction, which is expressly not contemplated or permitted. The foregoing is merely intended to confirm that, if the Conditions are satisfied, the Alley does not revert, regardless of what else happens under the Development Agreement, either before or after the Commencement of Construction.

(v) Good and marketable title to the City Spaces and the other Transit Elements (excluding the Transit Facility Dedication Area) shall be conveyed to the City upon recording of the Declaration promptly following Substantial Completion, which conveyance shall be subject only to the Permitted Exceptions. The form of the deed conveying the City Spaces and such Transit Elements shall be substantially as set forth on **Exhibit "G"** attached hereto. The Parties agree that the City Supermarket Spaces, the City Non-Supermarket Spaces and such other Transit Elements shall each be separate condominium units created pursuant to a Declaration prepared by Developer and approved by City, which approval shall not unreasonably be withheld. The Declaration shall be effective to convert the entire Project to the condominium form of ownership, with Developer retaining title to all condominium units other than those conveyed to the City.

(vi) The management and operation of the Transit Facility and certain matters pertaining to the relationship by and between the Parties shall be governed by the Declaration.

Section 6.3 Fees.

(a) City Permit Fees. Developer assumes payment responsibility for any and all Permits now or hereafter required to be obtained from the City (in its governmental capacity) for the construction of the Project, which include, without limitation, building permit applications, inspection, certification, impact and connection fees, fees that the City may levy by or through its Public Works Department (including, without limitation, water and sewer fees) and those fees, to the extent applicable, listed in the City of Miami Beach Building Department Fee Schedule, as amended through September 16, 1992 by Ordinance Number 92-2796, or the most current edition adopted by the City, which fee schedule is hereby incorporated by reference and made a part of this Agreement (collectively, the Fees). Developer shall remain responsible

for payment of the Fees notwithstanding any and all modifications or changes in price structure as imposed by the City or any other Governmental Authority authorized to impose such Fees.

(b) Non-City Permit Fees. Developer shall assume responsibility for payment of all fees charged by all other Governmental Authorities relating to the Project.

(c) Declaration Costs. The Parties acknowledge being aware that there are certain costs associated with the establishment of a condominium that do not exist in connection with the establishment of air rights estates. City and Developer shall be equally responsible for the following costs associated with the condominium structure of the transaction contemplated by this Agreement: (i) the legal fees and costs invoiced by Greenberg Traurig for preparation of the condominium documents (estimated to be approximately $30,000, assuming minimal negotiation and redrafting), which firm the Parties have agreed to engage to draft the condominium documents; City shall pay its half directly to Greenberg Traurig simultaneously with Developer's payment of its half within 30 days of receipt of an invoice (if City fails to do so, Developer may pay City's portion of Greenberg Traurig's invoice and City will promptly reimburse Developer) and (ii) within 30 days of receipt of an invoice (accompanied by reasonable substantiating documentation), the costs of recording the Declaration. With respect to the issue of extended construction warranties which are required under Section 718.203 of the Condominium Act, the Declaration addresses the treatment of same in Section 4(e)(iii). At Developer's sole option, to be exercised at any time prior to the Construction Commencement Date, Developer may elect to require City to pay to Developer City's pro rata share (based on the number of City Spaces in relation to the total number of City Spaces and Developer Spaces) of the incremental increase in cost payable by Developer to obtain from the general contractor and/or subcontractors and suppliers, the extended warranties required by Section 718.203 of the Condominium Act, as same may be amended. If Developer so elects, payment by the City to Developer shall be made at the time any holdback for Hard Costs is required to be paid by City to Developer under Exhibit C of this Agreement, whereupon the provisions of Section 4(e)(iii) of the Declaration shall be modified to provide that costs actually incurred by Developer for items that are covered by the extended warranty during the Extended Warranty Period, if any, shall be paid solely by Developer and shall not be included in Operating Expenses. This provision shall survive termination of this Agreement.

ARTICLE 7

INSURANCE

Developer shall, in accordance with the Declaration, carry or cause to be carried the insurance required under the Declaration and such other insurance as is required by any Institutional Lender (or if there is no Institutional Lender, then such insurance as an Institutional Lender would normally require in connection with construction the Project). Developer shall also carry such other insurance as required by FTA and such other insurance as City shall reasonably require, but City shall be solely responsible for the payment of any incremental premium increase if such coverages exceed those required by Developer's Institutional Lender, and this obligation shall survive termination.

ARTICLE 8

DAMAGE CONSTRUCTION AND RESTORATION

Section 8.1 Casualty.

If the Development Site is damaged or destroyed in whole or in part by fire or other casualty, the provisions of the Declaration applicable to damage or destruction by fire or other casualty to the Land or Property described under the Declaration or this Agreement shall govern the rights and obligations of Developer, City and any Recognized Mortgagee.

Section 8.2 Effect of Casualty on this Agreement.

Except as provided in Section 8.1 or the Declaration, this Development Agreement shall not terminate, be forfeited or be affected in any manner, by reason of any damage to, or total or partial destruction of, or untenantability of the Development Site or any part thereof resulting from such damage or destruction.

ARTICLE 9

CONDEMNATION

Section 9.1 Taking.

If all or any portion of the Development Site is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Developer, any Recognized Mortgagee and those authorized to exercise such right, the provisions of the Declaration applicable to such taking of the Premises described under the Declaration shall govern the rights and obligations of Developer, City and any Recognized Mortgagee hereunder.

Section 9.2 Effect of Taking on this Agreement.

Except as provided in Section 9.1 or the Declaration, this Development Agreement shall not terminate, be forfeited or be affected in any manner, by reason of any taking of the Development Site or any part thereof.

ARTICLE 10

RIGHTS OF RECOGNIZED MORTGAGEE

Section 10.1 Notice and Right to Cure Developer's Defaults.

(a) City shall give to any Recognized Mortgagee a copy of each notice of Default at the same time as it gives notice of such Default to Developer, and no such notice of Default shall be deemed effective with respect to any Recognized Mortgagee unless and until a copy thereof shall have been so received by or refused by such Recognized Mortgagee. All

such notices to a Recognized Mortgagee shall be sent as set forth herein. City shall also give the Recognized Mortgagee notice ("Notice of Failure to Cure") in the event Developer fails to cure a Default within the period, if any, provided in this Agreement for such cure, promptly following the expiration of such period (i.e., an "Event of Default").

(b) The Recognized Mortgagee shall have a period of ten (10) days as to monetary defaults and thirty (30) days as to non monetary defaults after receipt of the Notice of Failure to Cure to (1) cure the Event of Default referred to in the Notice of Failure to Cure or (2) cause it to be cured, subject in either case to the same additional time periods provided to Developer pursuant to the provisions of Section 17.1 (a) unless such default is excused because it is not susceptible of being cured by a Recognized Mortgagee (ex., defaults stated in Section 17.1 (b), (c), (d), and (e)). Nothing contained herein shall be construed as imposing any obligation upon any Mortgagee to so perform or comply on behalf of Developer.

(c) City shall accept performance by a Recognized Mortgagee of any covenant, condition or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer.

(d) Notwithstanding the foregoing provisions of this Section 10.1, if a Recognized Mortgagee fails (for any reason) to cure any Event of Default by Developer within ten (10) days as to monetary defaults or thirty (30) days as to non-monetary defaults following receipt of the Notice of Failure to Cure (as extended or excused as herein above provided), then City may, but shall be under no obligation to, perform the obligation of Developer the breach of which gave rise to such Event of Default (including, without limitation, the performance of any of the obligations of Developer under any Construction Agreement), without waiving or releasing Developer from its obligations with respect to such Event of Default and without waiving any remedies available to City at law or in equity or under this Agreement. Developer hereby grants City access to the Development Site and assigns to City the Construction Agreements (to the extent deemed necessary or desirable by City) in order to perform any such obligation.

(e) If there is more than one Recognized Mortgagee, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Mortgage is most senior in lien shall be recognized as having rights under this Article 10, unless such first priority Recognized Mortgagee has designated in writing to City a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

(f) Notwithstanding anything to the contrary set forth above, the Recognized Mortgagee shall be obligated to perform its obligations under Section 2.6(d) and the related agreement(s) referenced therein, and such Recognized Mortgagee and any purchaser at a foreclosure sale shall be deemed a third party beneficiary of this Agreement and shall be entitled to the rights of Developer hereunder (including those related to payment of the City's Transit Facility Contribution and other payments) if it succeeds to the interests of Developer.

ARTICLE 11

NO SUBORDINATION

Neither City's interest in the Property pursuant to this Agreement, as the same may be modified, amended or renewed, nor the City Spaces, other Transit Elements or City's interest in this Agreement or the Declaration shall be subject or subordinate to (a) any Mortgage or Other Loan Documents now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Developer's interest in the Land or Property or Developer's interest in this Development Agreement or (c) any mortgages, liens, encumbrances or Loan Documents now or hereafter placed on any interest in the Development Site.

ARTICLE 12

MAINTENANCE AND REPAIR

Section 12.1 Maintenance of Development Site.

(a) Maintenance and Repair.

(i) Developer shall at all times (both during and after construction) take good care of, and keep and maintain, the Development Site in good and safe order and condition, and shall make all repairs reasonably necessary to keep the Development Site in good and safe order and condition.

(ii) Developer shall not commit, and shall use all reasonable efforts to prevent waste, damage or injury to the Development Site and the Project.

(b) Cleaning of Development Site. Developer shall keep clean and free from rubbish all areas of the Development Site.

(c) Other Areas. Developer shall promptly rectify any damage or interference caused by Developer to any property, improvements, equipment, structures or vegetation inside or outside of the Development Site which is owned or controlled by City.

(d) Environmental; Brownfields. Developer shall comply with the terms of any further action letter and all other Requirements relating to environmental matters pertaining to the Development Site.

(e) Requirements. Developer shall at all times comply with all Requirements with respect to the use, condition, operation, ownership, maintenance and remediation of the Development Site and the Project.

(f) Maintenance of Development Site, FTA Requirements Developer understands and agrees that the federal government, through the funding provided by the FTA, if City elects to obtain such funding, retains a federal interest in any real property, equipment and supplies financed with federal assistance (limited to the Transit Elements) until, and to the extent that, the federal government relinquishes its federal interest. Unless otherwise approved by FTA, City and Developer agree to comply with the requirements identified in Section 19 of the FTA Master Agreement with respect to real property, equipment and supplies financed by the FTA (limited to the Transit Elements). Notwithstanding the foregoing or anything else

contained in this Agreement, FTA shall not be entitled to require a change to the business deal reflected by this Development Agreement (including the business deal related to funding of the City's Transit Facility Contribution or other payments by the City hereunder, and casualty and condemnation, as reflected in the Development Agreement and the Declaration). Further, Developer shall not be required to comply with FTA Requirements if such requirements are more costly to comply with than what is contained in the Project Concept Plan unless City, at its option, elects to pay for the excess costs (except that Developer shall comply with Davis Bacon Act and shall, consistent with the City's FTA approved DBE plan, use reasonable efforts to comply with the DBE requirements of the FTA Master Agreement based on up to 10% of an assumed $9,500,000 City's Transit Facility Contribution (but in no event less than 5% of an assumed $9,500,000 City's Transit Facility Contribution) at no additional cost to City, and Developer shall also comply with any other requirements of the FTA Master Agreement at the City's cost, and further provided, in respect of all FTA Requirements, they are reasonably capable of being implemented without unusual delay and without materially changing the character of the Project). Subject to the foregoing and any other specific limitations contained elsewhere in the Agreement, Developer agrees to exert reasonable good faith efforts to assist the City in meeting the requirements of the FTA (limited to the Transit Elements). This subparagraph shall survive expiration of the Term but not any other termination.

Section 12.2 Waste Disposal.

Developer shall dispose of waste from all areas of the Development Site in accordance with the Requirements and in a prompt, sanitary and aesthetically reasonably inoffensive manner.

ARTICLE 13

REQUIREMENTS

Section 13.1 Requirements.

(a) Obligation to Comply. In connection with any Construction Work, and with the maintenance, management, use, construction, ownership and operation of the Development Site, the Project, and Developer's performance of its obligations hereunder, Developer shall comply promptly with all Requirements, without regard to the nature of the work required to be done.

(b) Definition of Requirements. As used in this Agreement, "Requirements" shall mean:

(i) any and all laws, constitutions, rules, regulations, orders, ordinances, charters, statutes, codes, executive orders and requirements of all Governmental Authorities having jurisdiction over a Person and/or the Development Site or any street, road, avenue, alley or sidewalk comprising a part of, or lying in front of, the Development Site (including, without limitation, any of the foregoing relating to handicapped access or parking, the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions).

(ii) any conditions of the temporary and/or permanent certificate or certificates of occupancy issued for the Development Site as then in force;

(iii) the requirements of the City of Miami Beach Prevailing Wage Ordinance, Miami Beach City Code, Section 31A-27, as amended, if applicable;

(iv) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Developer under this Agreement;

(v) any and all provisions and requirements of that certain Brownfield Site Rehabilitation Agreement dated December 29, 2000 by and between Miami-Dade County and A&R Sobe, LLC; and

(vi) any and all requirements and responsibilities under federal law, regulation or directive, including, but not limited to, the FTA Requirements identified in the FTA Master Agreements.

ARTICLE 14

CREATION AND DISCHARGE OF LIENS

Section 14.1 Creation of Liens.

(a) Developer shall have no power or authority to, and shall not, create, cause to be created, or suffer or permit to exist (1) any lien, encumbrance or charge upon City's rights under or in respect of this Agreement, the Development Site, the Project, the City Spaces, the other Transit Elements or any part thereof or appurtenance thereto, the Declaration or the income therefrom, (2) any lien, encumbrance or charge upon any assets of, or funds appropriated to, City, or (3) any other matter or thing whereby City's interest in the Property or any part thereof or appurtenance thereto or any revenues therefrom might be materially impaired. Notwithstanding the above, Developer shall have the right to execute Mortgages and other Loan Documents, leases and other instruments (including, without limitation, equipment leases) encumbering only Developer's rights under or in respect of this Agreement, the Development Site or any part thereof or appurtenances thereto. Further, until the Declaration is filed and the City Spaces and other Transit Elements are conveyed to City, Developer may encumber the entire Property, subject to obtaining the lender recognition and other agreements provided for in Section 2.6(d) of this Development Agreement.

(b) City (in its proprietary capacity) shall have no power or authority to, and shall not, create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance upon Developer's rights under this Agreement, the Declaration or the income therefrom, the Development Site or any part thereof or appurtenance thereto, (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Developer, or (iii) any other matter or thing whereby Developer's interest in the Land or Property and any part thereof or appurtenant thereto might be impaired.

Section 14.2 Discharge of Liens.

(a) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien is filed against the City's interest in the Development Site or any part thereof (whether or not any such lien is valid), or City's interest in the Land or Property or if any public improvement lien created, or caused or suffered to be created, by Developer shall be filed against any assets of, or funds of City, Developer shall, within thirty (30) days after Developer receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

(b) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien is filed against the Developer's interest in the Development Site or any part thereof or Developer's interest in the Land or Property as a result of any action of City (in its proprietary capacity), City shall, within thirty (30) days after City receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

Section 14.3 No Authority to Contract in Name of City.

Nothing contained in this Article 14 shall be deemed or construed to constitute the consent or request of City, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Development Site or any part thereof, nor as giving Developer any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in the Property or any part thereof or against any assets of City. Notice is hereby given, and Developer shall cause all Construction Agreements to provide, that to the extent enforceable under Florida law, City shall not be liable for any work performed or to be performed at the Development Site or any part thereof for Developer or for any subtenant or for any materials furnished or to be furnished to the Development Site or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect City's interest in the Property or any part thereof or any assets of City.

ARTICLE 15

PUBLIC PURPOSE

Section 15.1 City acknowledges that public benefits will result from the Parties' performance of this Development Agreement ("Public Purpose" or "Public Benefits"). Such Public Benefits include but are not limited to the environmental remediation and redevelopment of the Brownfield Area pursuant to the City of Miami Beach Brownfield Resolution No. 2000-23963; revitalizing the area surrounding the Project to create a commercially viable commercial corridor between Alton Road and Ocean Drive along Fifth Street; providing a grocery store to the growing neighboring residential community; providing a parking garage; beautification to the City of Miami Beach's "Gateway Property," and preservation of the historical character of the

area/building located at the corner of Fifth Street and Lenox Avenue; creation of the Transit Elements component of the Project, and the creation of jobs for the City of Miami Beach community.

Section 15.2 In furtherance of the foregoing, Developer covenants and agrees to include as an initial occupant of the Retail Space a national or regional grocery store chain which shall initially open for the operation of a grocery supermarket. Developer shall enter into a binding lease ("Grocery Lease") having a minimum term of ten (10) years for not less than 40,000 square feet of Retail Area with a national or regional grocery supermarket which will unconditionally (subject to customary contingencies for Substantial Completion and performance by Developer of its construction obligations under the Grocery Lease) obligate the tenant to initially open for business as a grocery supermarket in the entire leased premises upon Completion of the Project. The Lease shall grant Developer the right to recapture the leased premises if the tenant ceases to operate a grocery supermarket from the entire leased premises during the lease term, other than temporarily for remodeling, reconstruction after casualty or condemnation, transfer of operations in the case of an assignment or subletting to another operator or Unavoidable Delays. If the tenant fails to open for business, or, after opening, ceases to operate a grocery supermarket from the entire leased premises (for other than a permitted reason listed above in this Section 15.2), Developer shall use diligent and good faith efforts to enter into a new lease with another national or regional grocery supermarket for the same leased premises and for the same use (a "Replacement Lease"). If Developer is unsuccessful in entering into a Replacement Lease, Developer shall at its option either (A) pay to the City $55.00 per City Supermarket Space per month (which amount will increase by 2.5% per annum starting at the time that the Contribution, as defined in the Declaration, starts increasing) for each month commencing when, and only during the time that, a replacement non-supermarket user is operating out of the space demised in the Grocery Lease and continuing through the end of the tenth year from the commencement of the lease term for the Grocery Lease (but any payments under this subparagraph (A) shall be fully refunded to Developer if Developer subsequently exercises option (B) below) or (B) purchase from City the City Supermarket Spaces pursuant to the closing procedure set forth in Developer's right of first refusal paragraph 9 of the Declaration for a price equal to City's Transit Facility Contribution allocable to such spaces together with interest thereon at the Interest Rate, as hereinafter defined, for the period commencing on the date payments under (A) above are provided to commence and continuing until the end of the tenth year from the commencement of the lease term for the Grocery Lease. From and after the date of conveyance of the City Supermarket Spaces to Developer, the percentages utilized for purposes of calculating the relative contributions of the City and Developer in respect of Operating Expenses and Revenue under the Declaration shall be adjusted proportionately, effective as of the date of the conveyance. The "Interest Rate" shall be the average yield on an annualized basis generated by investments actually made by the City in accordance with the City's Investment Policy and Procedure (designed to assure the preservation of principal, a copy of which has been furnished to Developer) during the period of time commencing on the commencement date of the term of the Grocery Lease and ending when Developer's option under this sentence is triggered. Any payments under (A) above, and interest under (B) above, shall cease at the end of the tenth year from the commencement of the lease term for the Grocery Lease. For purposes of this provision, if there is a condemnation, the first spaces taken shall be deemed to be City Supermarket Spaces. Further, if Developer is unsuccessful in entering into a Replacement Lease and if City and Developer, each acting in their own discretion, are unable to reach agreement as to an alternate

use for the space, City shall at its option then be entitled to attempt to locate another tenant (having either (X) an operating history and credit that are no less beneficial than the tenant (and any guarantors) under the Grocery Lease or (Y) a credit rating of not less than Standard and Poors A) who shall use the leased premises for family oriented retail/commercial uses that are no more parking intensive than grocery store use and do not violate any then existing exclusive or prohibited uses granted to other occupants of the Property and who shall pay the same base rent and pass-thrus as specified in the Grocery Lease for the same remaining term and who shall be entitled to the same options, rights, signage rights and benefits, and have the same obligations, burdens and responsibilities (other than those relating to use of the space as a grocery supermarket). If City does in fact locate another tenant, Developer shall thereupon recapture the Grocery Lease from the existing tenant and enter into a direct lease with the tenant identified by City at the same base rent and pass-thrus (but percentage rent shall not be required, and the tenant shall be required to pay 100% of the taxes allocable to the City Supermarket Spaces, to the extent Developer is obligated to pay or reimburse the City in respect of same) as specified in the Grocery Lease (and containing such other terms as are consistent with the Grocery Lease and otherwise customarily required for leases of similar space to similar tenants and otherwise consistent with the provisions of this Paragraph, without, however, an increase in any obligations or other economic changes that are adverse to Developer or the tenant). Specific consideration for the foregoing includes without limitation, vacation and conveyance by the City to Developer of the Alley as provided in Section 6.2.1 (iv) of this Development Agreement and the City's other agreements set forth in this Development Agreement. The provisions set forth in this Section 15.2 shall become null and void and of no further force or effect 10 years from the commencement of the lease term for the Grocery Lease.

Section 15.3 Developer represents that the intended initial use of the Project is retail/commercial/parking and that initially office use will only be an incidental purpose. Nothing contained herein, however, shall prevent Developer from using the Project for any lawful purposes which comply with all Requirements, except, however, for the provisions of this Article 15 with respect to the Grocery Lease and subsequent use of the space included in the Grocery Lease.

ARTICLE 16

RIGHT TO PERFORM THE OTHER PARTY'S COVENANTS

Section 16.1 Right to Perform Other Party's Obligation.

(a) If an Event of Default shall occur, and subject to any limitations contained elsewhere in this Agreement (including those for the benefit of Recognized Mortgagees) City may, but shall be under no obligation to, perform the obligations of Developer the breach of which gave rise to such Event of Default, without waiving or releasing Developer from any of its obligations contained herein, provided that City shall exercise such right only in the event of a *bona fide* emergency or after five (5) Business Days notice, and Developer hereby grants City access to the Development Site in order to perform any such obligation. Notwithstanding the foregoing, City shall not be entitled to perform any such obligations if a Recognized Mortgagee

promptly commences and thereafter diligently pursues reasonable steps in good faith to do so, and City shall not interfere with such rights of a Recognized Mortgagee to do so.

(b) If a default by City under this Agreement shall occur and be continuing beyond any applicable grace period, Developer may, but shall be under no obligation to, perform the obligations of City (other than those which are governmental as opposed to proprietary obligations) the breach of which gave rise to such default, without waiving or releasing City from any of its obligations contained herein, provided that Developer shall exercise such right only in the event of *a bona fide* emergency (threat of imminent injury to persons or property) or after five (5) Business Days notice to City.

Section 16.2 Discharge of Liens.

(a) If Developer fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Developer) to be discharged of record in accordance with the provisions of Article 14, City may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings.

(b) If City fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including, tax liens, provided the underlying tax is an obligation of City) to be discharged of record in accordance with the provisions of Article 14, Developer may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings.

Section 16.3 Reimbursement for Amounts Paid Pursuant to this Article.

Any reasonable amount paid by either Party in performing the obligations of the other party as provided in this Article 16, including all costs and expenses incurred in connection therewith, shall be reimbursed to the Party incurring same within thirty (30) days of demand.

Section 16.4 Waiver, Release and Assumption of Obligations.

(a) City's payment or performance pursuant to the provisions of this Article 16 shall not be, nor be deemed to constitute, City's assumption of Developer's obligations to pay or perform any of Developer's past, present or future obligations hereunder.

(b) Developer's payment or performance pursuant to the provisions of this Article 16 shall not be, nor be deemed to constitute, Developer's assumption of City's obligations to pay or perform any of City's past, present or future obligations hereunder.

ARTICLE 17

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 17.1 Definition.

Each of the following events shall be an Event of Default by Developer hereunder:

(a) If Developer shall default in the observance or performance of any term, covenant or condition of this Agreement on Developer's part to be observed or performed and, if no cure period is expressly provided for herein, Developer shall fail to remedy such Default within ten (10) days as to monetary default or thirty (30) days as to non-monetary defaults after notice by City (the Default Notice), or if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Developer shall (i) within thirty (30) days after the giving of such Default Notice, advise City of Developer's intention to institute all steps necessary (and from time to time, as reasonably requested by City, Developer shall advise City of the steps being taken) to remedy such default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same; or

(b) to the extent permitted by law, if Developer admits, in writing, that it is generally unable to pay its debts as such become due; or

(c) to the extent permitted by law, if Developer makes an assignment for the benefit of creditors; or

(d) to the extent permitted by law, if Developer files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if Developer files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's interest in the Land or Property, and the foregoing are not stayed or dismissed within one hundred fifty (150) days after such filing or other action; or

(e) to the extent permitted by law, if, within one hundred fifty (150) days after the commencement of a proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within one hundred fifty (150) days after the appointment, without the consent or acquiescence of Developer, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's interest in the Land or Property, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred fifty (150) days after the expiration of any such stay, such appointment has not been vacated;

(f) if a levy under execution or attachment in an aggregate amount of One Hundred Thousand Dollars ($100,000) (as adjusted for inflation) at any one time is made against the Development Site or any part thereof or rights appertaining thereto and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of sixty (60) days, subject to Unavoidable Delays after such levy or attachment;

(g) Developer's failure to achieve Substantial Completion on or before the Completion Deadline; or

(h) Any voluntary or involuntary assignment of the Developer's rights hereunder or if Jeffrey Berkowitz, Alan Potamkin and Robert Potamkin, collectively, shall cease to own a majority of the membership and beneficial interests and the Controlling Interest in Developer or shall cease to have control over the Construction of the Project, in either case at any time prior to Substantial Completion of the Project.

City's notice to Developer shall state with specificity the provision of this Agreement under which the Default is claimed, the nature and character of such Default, the facts giving rise to such Default, the date by which such Default must be cured pursuant to this Agreement, if applicable, and, if applicable, that the failure of Developer to cure such Default by the date set forth in such notice will result in City having the right to terminate this Agreement. With respect only to Development Disputes, City's allegation of a Default shall be subject to expedited arbitration in accordance with the provisions of Article 19, or within ten (10) Business Days after receipt of City's notice if no such grace period is provided therein.

Notwithstanding the foregoing, no Event of Default shall be deemed to have occurred until such time as City shall have given Developer notice of the occurrence of a Default; provided, however, if Developer shall dispute, in accordance with the provisions of Article 19, City's assertion that a Default which is a Development Dispute has occurred within ten (10) Business Days after the giving of such notice by City, an Event of Default as to any such Development dispute shall not be deemed to have occurred and City shall not be permitted to exercise any rights against Developer stated herein to arise out of an Event of Default until such time as the Development Arbitrator has determined that an Event of Default has occurred.

Developer agrees to make a good faith effort to notify City of any Unavoidable Delays affecting performance by Developer of its obligations under this Agreement and the estimated delay to result therefrom.

Section 17.2 Enforcement of Performance; Damages and Termination.

If an Event of Default occurs, City may elect to (a) enforce performance or observance by Developer of the applicable provisions of this Agreement or (b) recover damages for breach of this Agreement, with or without terminating this Agreement, and/or (c) exercise any other remedies available at law, in equity or under this Agreement. City's election of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect City's right to elect any of the remedies available to City hereunder or at law or in equity with respect to any other Event of Default. Anything in the Development Agreement to the contrary notwithstanding, (i) City shall not be entitled to perform any obligations of Developer if a

Recognized Mortgagee promptly commences and thereafter diligently pursues reasonable steps to in good faith do so, and City shall not interfere with a Recognized Mortgagee's rights to do so and (ii) any recovery by City of damages under this Development Agreement shall be limited to the amount of the City's Transit Facility Contribution actually paid by City to Developer, together with interest thereon at the lesser of (A) the average yield on an annualized basis generated by investments actually made by the City in accordance with the City's Investment Policy and Procedure (designed to assure the preservation of principal, a copy of which has been furnished to Developer) during the like period of time or (B) simple interest at the rate of 4% per annum, in each case from the date of disbursement until the date repaid, and upon receipt of such sum, City shall relinquish all interests in the Project to Developer or its designee and this Agreement shall terminate; provided, however, that the foregoing limitation on the City's right to recover damages shall not apply with respect to any of Developer's indemnification obligations hereunder, including without limitation the indemnification contained in Section 21.1. Nothing contained in the Agreement shall preclude City from pursuing specific performance of Developer's obligations under this Agreement, but the right to specific performance by the City is subject to Developer's exercise of any termination right granted in this Agreement.

Section 17.3 Strict Performance.

No failure by City or Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other Party's Default or an Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either Party, and no Default by either Party, shall be waived, altered or modified except by a written instrument executed by the other Party. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default. Developer's compliance with any request or demand made by City shall not be deemed a waiver of Developer's right to contest the validity of such request or demand. This provision shall survive termination of this Agreement.

Section 17.4 Right to Enjoin Defaults.

With respect to Development Disputes and all other disputes, in the event of Developer's Default or an Event of Default, City shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent City's remedies are expressly limited by the terms hereof. With respect to Development Disputes and all other disputes, in the event of any default by City of any term, covenant or condition under this Agreement, Developer shall be entitled to seek to enjoin the default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Developer's remedies are expressly limited by the terms hereof. Each right and remedy of City and Developer provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent City's remedies or Developer's remedies are expressly limited by

the terms hereof, and the exercise or beginning of the exercise by City or Developer of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City or Developer of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity, except to the extent City's remedies and Developer's remedies are expressly limited by the terms hereof.

Section 17.5 Remedies under Bankruptcy and Insolvency Codes.

If an order for relief is entered or if any stay of proceeding or other act becomes effective against Developer, Developer's interest in the Land or Property, or Developer's interest in this Agreement, or City, City's interest in the Land or Property, or City's interest in this Agreement, as applicable, in any proceeding which is commenced by or against Developer or City, as applicable, under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Developer or City, as applicable, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, City or Developer, as applicable, shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Agreement (except to the extent City's remedies and Developer's remedies are expressly limited by the terms hereof).

Section 17.6 Inspection.

Without in any way limiting Article 4, City and its representatives shall have the right to enter upon the Development Site to conduct inspections for the purpose of determining whether a Default or an Event of Default has occurred, provided that City shall be accompanied by a representative of Developer and provided further that such entry shall not unreasonably interfere with the Construction of the Project and shall be at City's sole risk. Developer agrees to make a representative of Developer available to accompany City on any such inspection.

Section 17.7 City's Default.

In the event of any default by City hereunder, Developer shall give City written notice specifying such default and City agrees to promptly commence the curing of such default and to cure such default within ten (10) days after receipt of notice in the case of payment of money or thirty (30) days after receipt of notice as to other defaults; provided, however, that if such default cannot reasonably be cured within said thirty (30) day period, then City shall cure any such default as diligently as reasonably practicable under the circumstances and shall have a reasonable period of time within which to cure such default so long as City is so proceeding. If City fails to cure any default during the applicable curative period, Developer, at any time after the expiration of such curative period, shall have the right to exercise any remedy provided in this Agreement or available to Developer at law or in equity. City agrees to make a good faith effort to notify Developer of any Unavoidable Delays affecting the performance by City of its obligations under this Agreement and the estimated delay to result therefrom.

Developer's notice to City shall state with specificity the provision of this Agreement under which the City's default is claimed, the nature and character of such City's default, the

facts giving rise to such City's default, the date by which such City's default must be cured pursuant to this Agreement, if applicable, and, if applicable, that the failure of City to cure such City's default by the date set forth in such notice will result in Developer having the right to terminate this Agreement or exercise any other remedies specified by Developer. With respect only to Development Disputes, Developer's allegation of a City default shall be subject to expedited arbitration in accordance with the provisions of Article 19, or within ten (10) Business Days after receipt of Developer's notice if no such grace period is provided therein.

Notwithstanding the foregoing, Developer may not exercise its remedies for a City default until such time as Developer shall have given City notice of the occurrence of same; provided, however, if City shall dispute, in accordance with the provisions of Article 19, Developer's assertion that a City default which is a Development Dispute has occurred within ten (10) Business Days after the giving of such notice by Developer, Developer shall not be permitted to exercise any rights against City stated herein to arise out of a City default until such time as the Development Arbitrator or a court, if applicable, has determined that a City default has occurred.

Anything in this Development Agreement to the contrary notwithstanding, City shall not withhold any payments that are payable under this Development Agreement because of any alleged default by Developer under this Agreement (provided that City shall not be obligated to fund except as provided for in this Agreement, which specifies documentation to be furnished to City and simultaneous funding by the City and Developer's construction lender of draw requests). Any such payments shall, however, be made with full reservation of rights. This provision is included in recognition of the fact that the City and Developer's construction lender will be funding construction of the Project pari passu and any withholding of funds by the City could adversely impact Developer's ability to obtain funding from its construction lender.

ARTICLE 18

NOTICES, CONSENTS AND APPROVALS

Section 18.1 Service of Notices and Other Communications.

(a) In Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other (or any Recognized Mortgagee), or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Development Site, each such notice, demand, request, consent, approval or other communication (referred to in this Section 18.1 as a Notice) shall be in writing (whether or not so indicated elsewhere in this Agreement) and shall be effective for any purpose only if given or served by (i) certified or registered U.S. Mail, postage prepaid, return receipt requested, (ii) personal delivery with a signed receipt, (iii) a recognized national courier service or (iv) facsimile or e-mail (provided a confirmation page shall be generated) addressed or delivered as follows:

If to Developer:

AR&J Sobe, LLC
c/o Berkowitz Development
2665 South Bayshore Drive
Suite 1200
Coconut Grove, Florida 33133
Attention: Jeffrey L. Berkowitz

With a copy to:

Wayne Pathman, Esq.
Pathman Lewis, LLP
One Biscayne Tower, Suite 2400
Two South Biscayne Blvd.
Miami, Florida 33131

If to City:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: City Manager

With a copy to:

Brian Tague, Esq.
Tew Cardenas LLP
201 South Biscayne Boulevard
Suite 2600, Miami Center
Miami, Florida 33131

Any Notice may be given, in the manner provided in this Section 18.1, (x) on either party's behalf by its attorneys designated above or otherwise designated by such party by Notice hereunder, and (y) at Developer's request, on its behalf by any Recognized Mortgagee designated in such request.

(b) Effectiveness. Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof.

(c) References. All references in this Agreement to the date of Notice shall mean the effective date, as provided in the preceding Subsection (b).

Section 18.2 Consents and Approvals.

(a) Effect of Granting or Failure to Grant Approvals or Consents. Except as and to the extent provided herein, all consents and approvals which may be given under this Development Agreement shall, as a condition of their effectiveness, be in writing. The granting

by a party of any consent to or approval of any act requiring consent or approval under the terms of this Development Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act, except as and to the extent provided herein.

(b) Standard. All consents and approvals which may be given by a party under this Development Agreement shall not (unless otherwise specified in this Development Agreement) be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. In furtherance of the foregoing, in determining whether City has acted reasonably in not giving its consent or approval, the trier of fact shall take into consideration (for so long as City is the City or any Governmental Authority) that City is a political body governed by elected officials or persons that are appointed, directly or indirectly, by elected officials. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

(c) Deemed Approval.

(i) If a party entitled to grant or deny its consent or approval (the Consenting Party) within the specified time period shall fail to do so, then, except as otherwise provided in Section 18.2 (c)(ii) below, and provided that the request for consent or approval bears the legend set forth below in capital letters and in a type size not less than that provided below, the matter for which such consent or approval is requested shall be deemed consented to or approved, as the case may be:

FAILURE TO RESPOND TO THIS REQUEST WITHIN THE TIME PERIOD PROVIDED IN SECTION _____ [FILL IN APPLICABLE SECTION] OF THE DEVELOPMENT AGREEMENT BETWEEN CITY OF MIAMI BEACH, FLORIDA AND AR&J SOBE, LLC SHALL CONSTITUTE AUTOMATIC APPROVAL OF THE MATTERS DESCRIBED HEREIN WITH RESPECT TO SECTION [FILL IN APPLICABLE SECTION] OF SUCH DEVELOPMENT AGREEMENT.

(ii) Notwithstanding anything to the contrary contained in Section 18.2 (c)(i) above, if the City hereunder and the matter, other than a matter referred to in Section 20.2 (c)(iii) below, to be consented to or approved requires the consideration of the City Commission, as applicable (whether pursuant to Requirements or the written opinion of the City Attorney), then such matter shall not be deemed approved or consented to unless City shall fail to respond to Developer's request by the date which is five (5) Business Days after the meeting of the City Commission in which the matter in question is decided; but in any event not later than seventy-five (75) days following such request (or second request), as applicable.

(iii) The foregoing provisions of this Subsection shall not be construed to modify or otherwise affect a party's right to arbitrate or litigate, as applicable, the failure of a party to act reasonably in granting or denying a request for consent or to timely respond to a request for a consent, but such right to arbitrate or litigate, as applicable, shall not serve to delay the time period within which a grant or denial of such request is required hereunder.

(d) Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Agreement, any consent or approval by City or Developer is alleged to have been unreasonably withheld, conditioned or delayed, then any dispute as to whether such consent or approval has been unreasonably withheld, conditioned or delayed shall be settled by arbitration or litigation, as applicable. In the event there shall be a final determination that the consent or approval was unreasonably withheld, conditioned or delayed so that the consent or approval should have been granted, the consent or approval shall be deemed granted and the party requesting such consent or approval shall be entitled to any and all damages resulting therefrom, subject to the limitations provided in this Agreement.

(e) No Fees, Etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Agreement (provided that the foregoing shall not be deemed in any way to limit City acting in its governmental, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory basis).

(f) Governmental Capacity. Notwithstanding anything to the contrary contained in this Section 18.2, the City shall not be required by this Development Agreement to give its consent to any matter arising from or in connection with this Development Agreement when the City is acting in its governmental capacity.

Section 18.3 Estoppel Letters. Each Party shall, from time to time promptly upon request of the other, furnish to the requesting Party an estoppel letter containing such truthful information as the requesting Party may reasonably request pertaining to this Agreement or the transaction contemplated hereby.

ARTICLE 19

ARBITRATION

Section 19.1 Expedited Arbitration of Development Disputes.

(a) If Developer or City asserts that a Development Dispute has arisen, such asserting party shall give prompt written notice thereof to the other party and to the Development Arbitrator, as hereinafter defined.

(b) The Development Arbitrator shall no later than two (2) Business Days after receipt of such notice, hold a preliminary, informal meeting with City and Developer in an attempt to mediate such Development Dispute. If such Development Dispute shall not be resolved at that meeting, the Development Arbitrator shall at such mediation meeting establish a

date, not earlier than four (4) Business Days after the mediation hearing nor later than seven (7) Business Days after the mediation hearing for a hearing (a "Hearing") to be held in accordance with this Agreement to resolve such Development Dispute.

(c) Developer and City shall each have the right to make one (1) written submission to the Development Arbitrator prior to any Hearing. Such submission shall be received by the Development Arbitrator and the other party not later than two (2) Business Days prior to the Hearing Date. The parties agree that no discovery (as the term is commonly construed in litigation proceedings) will be needed and agree that neither party nor the Development Arbitrator shall have discovery rights in connection with a Development Dispute.

(d) Each Hearing shall be conducted by the Development Arbitrator. It is the intention of the parties that the Hearings shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. Each party shall have the opportunity to make a brief statement and to present documentary and other support for its position, which may include the testimony of not more than four (4) individuals, two (2) of whom may be outside experts. There shall be no presumption in favor of either party's position. Any procedural matter not covered herein or mutually agreed upon between the Parties shall be governed by the Amended 1993 edition of the CPR Rules for the Arbitration of Business Disputes and the Florida Arbitration Code to the extent not inconsistent with the CPR Rules and this Section 19.1.

(e) The Hearings shall be held in a location selected by the Development Arbitrator in Miami-Dade County, Florida. Provided the Development Arbitrator is accompanied by representatives of both Developer and City, the Development Arbitrator may, at its option, visit the work site to make an independent review in connection with any Development Dispute.

(f) Once it has been determined by the Development Arbitrator or by agreement of the parties with respect to any Development Dispute that Developer's proposed modifications are material with regard to, or materially inconsistent with, the Preliminary Plans and Specifications or the Plans or Specifications pursuant to Section 3.1 the Development Arbitrator shall take into account, in determining whether City has acted unreasonably in failing to grant an approval or consent as described in Section 3.4 (b) such factors as he or she deems relevant which are not inconsistent with this Agreement (including items 1 through 6, below), which in all events shall include the following factors:

(1) City does not have any approval rights with respect to the matter of interior design and decor of the Retail Space.

(2) The Project shall be a first class facility with a grocery store and restaurant/office/retail space and Transit Facility at a quality comparable with the quality set forth in the Preliminary Plans and Specifications.

(3) The mutual goal of Developer and City that Project Construction Costs overruns shall be minimized.

(4) The mutual goal of Developer and City that the Construction of the Project be commenced as promptly as reasonably possible and completed within approximately twenty-four (24) months from Commencement of Construction.

(5) Applicability of any Requirement.

(6) The magnitude of the modification to the Preliminary Plans and Specifications or Plans and Specifications, as applicable.

(g) Pending resolution of the Development Dispute, Developer may not implement the matter which is the subject of such Development Dispute.

(h) The Development Arbitrator shall render a decision, in writing, as to any Development Dispute not later than two (2) Business Days following the conclusion of the Hearings regarding such Development Dispute and shall provide a brief written basis for its decision not later than three (3) Business Days thereafter. As to each Development Dispute, the Development Arbitrator's decision shall be limited to (i) whether or not Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans or Specifications pursuant to Section 3.1 is material, (ii) whether or not Developer's proposed modification(s) to the Preliminary Plans and Specifications or the Plans or Specifications pursuant to Section 3.1 (a) or (b), respectively, is materially inconsistent, (iii) whether or not City has unreasonably failed to approve or give its consent to any modifications to the Preliminary Plans or Specifications or the Plans and Specifications pursuant to Section 3.1 (a) or (b); and/or (iv) whether or not Developer or City is entitled to any extension of time for performance. The Development Arbitrator may not award any other or different relief.

(i) The decision of the Development Arbitrator shall be final and binding on the parties for all purposes and may be entered in any court of competent jurisdiction.

(j) The Parties shall cooperate to select an independent, neutral, professional firm having the requisite knowledge in retail development and/or construction experience to serve as the arbitrator, and who is available to act within the abbreviated time frames set forth herein (the "Development Arbitrator"). The Parties agree that each of the following persons are at this time satisfactory to serve as Development Arbitrator, namely: Judge Gerald Wetherington , Judge J. Kogan, Judge Edward Davis, Judge David Tobin and Mr. John Freud. City authorizes Developer to designate any one of them to be the Development Arbitrator, subject to availability and other material change of circumstances, but this right to designate shall not limit the ability of both Parties to jointly designate someone else; provided, however, that any of said persons that is designated as a Development Arbitrator may select, subject to the reasonable approval of the parties, a knowledgeable consultant to provide technical guidance, input and expertise on the subject matter of the dispute. If a Development Arbitrator has been previously designated to resolve a dispute under this Article 19, such Development Arbitrator shall be the designated Development Arbitrator for all subsequent disputes unless both Parties mutually agree to designate a different Development Arbitrator, which they shall do if there is a material change of circumstances or the prior Development Arbitrator is not available to act on the abbreviated time frames specified herein. If the Parties cannot agree within two (2) business days on the selection of a Development Arbitrator, then any party may

ask the CPR Institute for Dispute Resolution to select a substitute who will act as Development Arbitrator of that Development Dispute.

(k) The cost of the Development Arbitrator and any consultant selected pursuant to the proviso set forth in (j) above shall be equally shared by the Parties. Each Party shall bear its costs, including those of its experts and legal fees, associated with the arbitration.

Section 19.2 Litigation.

Any dispute between the parties, other than a Development Dispute, shall be subject to litigation and not arbitration.

ARTICLE 20

NO PERMIT OR WAIVER OF FEES/APPLICABILITY OF BROWNFIELD REDEVELOPMENT ACT

This Development Agreement is not and shall not be construed as a Development Approval, Building Permit or authorization to commence development, nor shall it relieve Developer of the obligations to obtain necessary Development Approvals, Building Permits and other required permits that are required under applicable law and under and pursuant to the terms of this Development Agreement. Nothing contained in this Development Agreement shall be deemed to constitute a waiver of any fee, charge or cost imposed by the City in connection with the issuance of any Development Approval, Building Permit or other permit.

Notwithstanding the preceding Paragraph with respect to the waiver of permit or any impact and other fees, City acknowledges that the Land has been designated as a Brownfield pursuant to Miami Beach City Commission Resolution No. 2000-23963, and that A&R Sobe, LLC has entered into a Brownfield Site Rehabilitation Agreement with Miami-Dade County, Florida.

Developer may make application for and diligently pursue maximizing the benefits to which the Project may be entitled as a result of the Brownfield designation, including any benefits afforded by the Brownfield Recovery Act and any other related state, local or federal program (including, if available, waiver of any impact, permit or other fees or costs). City shall cooperate with Developer in connection with the application and any requirements associated with the foregoing, provided, however, City shall not be required to expend any money or incur any other liability with respect thereto, and any approvals required by the City associated with this Article 20 shall be subject to the prior consideration and approval of the City Commission (if and to the extent required by law), which approval, if any is required, shall be given at the City Commission's discretion. To the extent that such benefits are available to a municipality or governmental entity with respect to Brownfields, City agrees to cooperate and utilize reasonable good faith efforts in making application for and diligently pursuing maximizing the recovery of such Brownfields and other benefits; provided, however, City shall not be required to expend any money or incur other liability with respect thereto, and any approvals required by the City associated with this Article 20 shall be subject to the prior consideration and approval of the City Commission (if and to the extent required by law), which approval, if any is required, shall be

given at the City Commission's discretion. Any Brownfield or other such funds that City is otherwise entitled to, eligible for, receives or can obtain in respect of the Project shall, to the extent the City is lawfully entitled to do so, be paid first to City for the reimbursement of expenditures or monies associated with this Article 20, then to Developer in addition to City's Transit Facility Contribution, anything to the contrary contained in this Development Agreement notwithstanding.

ARTICLE 20A

INVESTIGATIONS, ETC.

To the extent required by Requirements, Developer shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. In addition, Developer shall promptly report in writing to the City Attorney of the City of Miami Beach, Florida any solicitation, of which Developer's officers or directors have knowledge, of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of City, City or other Person relating to the procurement or obtaining of this Development Agreement by Developer or affecting the performance of this Development Agreement.

ARTICLE 21

HAZARDOUS MATERIALS

Section 21.1 General Provision.

The provisions of Paragraph 3 (e) of Exhibit E attached hereto shall be applicable to this Agreement. Notwithstanding the foregoing, City assumes no liability or obligation pursuant to the Brownfield Site Rehabilitation Agreement ("BSRA") entered into by and between Developer and Miami-Dade County, Florida, for any existing obligations under said Agreement. Additionally, City assumes no liability for any environmental contamination associated with the construction of the Project. The parties to this Agreement acknowledge and agree that City's obligation for any environmental contamination shall begin only as to environmental conditions first arising upon or after completion of the Project. Developer shall be solely responsible for any environmental conditions existing on the Land as of the date hereof, and all remediation thereof, and shall indemnify and hold City harmless from all liability, damages, losses and costs (including reasonable attorneys' fees and costs at all levels) arising therefrom or relating thereto. The preceding 3 sentences shall survive termination or expiration of this Agreement.

Section 21.2 Survival.

The provisions of this Article 22 shall survive the expiration or sooner termination of this Agreement.

ARTICLE 22

MISCELLANEOUS

Section 22.1 Governing Law and Exclusive Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. Federal Court venue shall be available only if exclusive jurisdiction is vested in the Federal Courts. The exclusive venue for any expedited arbitration arising out of this Agreement shall be in Miami-Dade County, Florida.

BY ENTERING INTO THIS AGREEMENT, DEVELOPER AND OWNER EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

Section 22.2 References.

(a) Captions. The captions of this Development Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Development Agreement or in any way affect this Development Agreement. All captions, when referring to Articles or Sections, refer to Articles or Section in this Development Agreement, unless specified otherwise.

(b) Table of Contents. The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Agreement.

(c) City's Governmental Capacity. Nothing in this Agreement or in the parties acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of the City in the discharge of its police or governmental power.

(d) Reference to Herein, Hereunder, Etc. All references in this Agreement to the terms herein, hereunder and words of similar import shall refer to this Agreement, as distinguished from the Paragraph, Section or Article within which such term is located.

(e) Reference to Approval or Consent, Etc. All references in this Agreement to the terms approval, consent and words of similar import shall mean reasonable written approval or reasonable written consent except where specifically provided otherwise

Section 22.3 Entire Agreement, Etc.

(a) Entire Agreement. This Development Agreement, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between City (in its proprietary capacity as opposed to its governmental

capacity) and Developer concerning the development and construction of the Project on the Development Site and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments thereto or as may be expressly contained in the Declaration or any other written agreements or instruments executed simultaneously herewith by the parties hereto. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall represent one instrument.

(b) Waiver, Modification, Etc. No covenant, agreement, term or condition of this Development Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by City and Developer. No waiver of any Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default thereof.

(c) Effect of Other Transactions. No Mortgage, whether executed simultaneously with this Agreement or otherwise, and whether or not consented to by City, shall be deemed to modify this Agreement in any respect, and in the event of an inconsistency or conflict between this Agreement and any such instrument, this Agreement shall control. This Agreement shall not be subject or subordinate to any mortgage or any Loan Documents.

(d) Prevailing Party; Attorneys' Fees. In the event of litigation concerning this Agreement, the prevailing party shall be entitled to receive its costs and reasonable attorneys' fees, at trial and through and including all appeals, from the non-prevailing party.

Section 22.4 Invalidity of Certain Provisions.

If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 22.5 Remedies Cumulative.

Each right and remedy of either Party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a Party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

Section 22.6 Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Agreement, when either Party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense. Whenever this Agreement provides that a Party shall cooperate or shall provide information so long as such Party incurs no cost or expense in doing go, such provision shall mean no third party out-of-pocket costs and shall not include costs of salary or overhead of such Party's employees. The preceding sentence, however, shall apply to City only when it is acting in its proprietary capacity as a Party to this Development Agreement and shall not limit or restrict City's ability to impose charges or fees in accordance with its normal and customary policies when City is acting in its governmental capacity.

Section 22.7 Time is of the Essence.

Time is of the essence with respect to all matters in, and requirements of, this Development Agreement as to both City and Developer including, but not limited to, the times within which Developer must commence and complete Construction of the Project.

Section 22.8 Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, City and Developer, and, except as otherwise provided herein, their respective successors and permitted assigns. If, while City is the City hereunder, the City shall cease to exist, the City, by its signature hereto, hereby agrees to be bound with respect to all of the terms, covenants and conditions of City hereunder and Developer agrees to recognize the City as City hereunder. There can be no assignment by Developer of its rights or obligations hereunder or its interest in this Agreement, except that Developer may assign all its rights hereunder to a Recognized Mortgagee as security for the performance of Developer's obligations under the Loan Documents (and such Recognized Mortgagee, its successors or assigns shall be recognized and afforded the benefits of this Agreement, including the City's obligation to pay the City's Transit Facility Contribution, if they take over construction of the Project or acquire the Project and, to the extent contemplated in Section 2.6(d) above, assume all of Developer's obligations hereunder). Any transfer of any membership interests in Developer and any change which results in management or control of Developer being vested in any person or entity other than Jeffrey Berkowitz and/or Alan Potamkin and/or Robert Potamkin shall constitute a violation of this Agreement and shall constitute an Event of Default by Developer. There shall be no assignment by City hereunder, except to another duly constituted governmental entity. This Development Agreement shall not be binding on tenants of the Property who occupy same as tenant only.

Section 22.9 Notice of Defaults.

Notwithstanding anything to the contrary set forth in this Development Agreement, under no circumstances shall any party to this Development Agreement lose any right or benefit granted under this Agreement or suffer any harm as a result of the occurrence of any Default or default of such party as to which Default or default such party has not received notice thereof from the other party.

Section 22.10 No Representations.

City has made no representations herein as to the condition of the Development Site.

Section 22.11 Nature of Obligations.

It is expressly understood that this Development Agreement and obligations issued hereunder are solely company obligations, and that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, members, principals, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such, of City or Developer, or of any successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, except for Guarantors' obligations under the Guaranty; that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, members, principals, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement, except to the extent contained in a separate Guaranty or separate instrument.

Section 22.12 Non-liability of Officials and Employees.

No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or for any amount or obligation which may become due to Developer or successor under the terms of this Agreement; and, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, under or by reason of the obligations, covenants or agreements contained in this Development Agreement or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Development Agreement.

Section 22.13 Partnership Disclaimer.

Developer acknowledges, represents and confirms that it is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Development Agreement.

The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, the Declaration or the other documents executed by the Parties with respect to the Project shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this Section 23.13 shall survive expiration of this Development Agreement.

Section 22.14 Time Periods.

Any time periods in this Agreement of less than five (5) days shall be deemed to be computed based on Business Days (regardless of whether any such time period is already designated as being computed based on Business Days). In addition, any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

Section 22.15 No Third Party Rights.

Nothing in this Development Agreement, express or implied, shall confer upon any Person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement; provided, however, that a Recognized Mortgagee shall be third party beneficiaries hereunder to the extent same are specifically granted rights in Section 10.1 hereof or elsewhere in this Agreement. Further, the successor and assigns of Developer shall be third party beneficiaries hereunder as provided in Section 23.18.

Section 22.16 No Conflict.

Developer represents and warrants that, to the best of its actual knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Development Agreement nor has participated in any decision relating to this Development Agreement that is prohibited by law. Developer represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Developer. Developer represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Developer acknowledges that City is relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

Section 22.17 Recording of Development Agreement.

Within 14 days after the Effective Date, City shall record this Agreement with the clerk of the circuit court in and for Miami-Dade County, Florida. The cost of recording shall be borne equally by Developer and City. A copy of the recorded Development Agreement shall be submitted by the City to the state land planning agency within 14 days after this Development Agreement is recorded. This Development Agreement shall not be effective until it is properly recorded in the public records of said county and until 30 days after having been received by the state land planning agency pursuant to this Section. The burdens of this Development Agreement shall be binding upon, and the benefits of this Development Agreement shall inure to, all successors in interest to the Parties. Upon termination of this Agreement for any reason, either Party willl, within 10 days of written request by the other, deliver to the other a written confirmation of termination in recordable form, which may in the case of the City be executed by the City Manager and shall conclusively establish of record the fact of termination, and this provision shall survive termination.

Section 22.18 Duration of This Development Agreement.

(a) This Development Agreement shall terminate (but subject, however, to the continuation of those provisions hereof which expressly survive termination) upon Substantial Completion of the Project, conveyance of the City Spaces and Transit Elements to City, dedication of the Transit Facility Dedication Area to the City and payment by City to Developer of all amounts required to be paid by City to Developer hereunder; provided, however, that the duration of this Development Agreement may be extended by mutual agreement of the City and Developer. Any payment required to be paid by either party that is not paid when due shall bear interest at ten percent (10%) per annum from the date due until paid. If this Development Agreement is terminated for any reason at any time prior to Commencement of Construction, in addition to any other obligations that survive termination that are specified in this Development Agreement, Developer shall repay to City any portion of the City's Transit Facility Contribution which has then been disbursed by City, excluding the portion allocated to the Transit Facility Dedication Area (and the Transit Facility Dedication Area Finishes) if it has been conveyed to City (and such property shall remain City's property), together with interest thereon at the lesser of (A) the average yield on an annualized basis generated by investments actually made by the City in accordance with the City's Investment Policy and Procedure (designed to assure the preservation of principal, a copy of which has been furnished to Developer) during the like period of time or (B) simple interest at the rate of 4% per annum, in each case from the date of disbursement until the date repaid. If termination occurs as a result of an Event of Default by either party, the party not in default shall also have such remedies as are available at law or in equity or as specified herein.

(b) During the term of this Development Agreement, the City's laws and policies governing the development of land in effect as of the date hereof shall govern development of the Land. The City may apply subsequently adopted laws and policies to the Project only if the City has held a public hearing pursuant to Section 163.3225, Florida Statutes, and determined:

(i) they are not in conflict with the laws and policies governing this Development Agreement and do not prevent development of the land uses, intensities, or densities in this Development Agreement; or

(ii) they are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement; or

(iii) they are specifically anticipated and provided for in this Development Agreement; or

(iv) the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of Development Agreement; or

(v) this Development Agreement is based on substantially inaccurate information supplied by Developer.

Section 22.19 Survival.

Upon expiration or termination of this Development Agreement for any reason, the following provision shall nevertheless survive and remain in full force and effect (in addition to any other terms or provisions which specifically state that they shall survive, which shall survive

without being specifically recited in this Article): the provisions of Sections 2.8(b)(v) and (vi), Section 5.3 as provided therein, Sections 17.2, 17.3, 17.4 and 17.7 to the extent applicable to matters that survive termination, Section 18.1 and Article 23 of this Agreement, excluding Section 23.18(b). Anything in this Agreement to the contrary notwithstanding, the provisions that survive termination after Substantial Completion shall inure to the benefit of the Developer's successors and assigns, whether or not they are permitted assignees under this Agreement. Further, upon expiration or termination of this Development Agreement for any reason prior to the conveyance of the Transit Facility Dedication Area, the City shall be deemed to have irrevocably elected to have exercised its option to acquire the Transit Facility Dedication Area, and to pay for same and the Transit Facility Dedication Area Finishes, as contemplated by the Vacation Agreement and Vacation Resolution, which Vacation Resolution and Vacation Agreement shall survive termination of this Agreement and the Parties shall be bound thereby. This provision shall survive termination or expiration of this Agreement.

ARTICLE 23

CITY'S RIGHT OF FIRST OFFER

Simultaneously herewith, Developer grants to City a Right of First Offer in the form of **Exhibit "L".** Said right of first offer shall survive termination of this Development Agreement under the first sentence of Section 23.18(a) but not otherwise.

IN WITNESS WHEREOF, City and Developer intending to be legally bound, have executed this Development Agreement as of the day and year first above written.

WITNESSES:

_____
Print Name_____

_____
Print Name_____

_____
Print Name_____

_____
Print Name_____

CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida

By:_____
David Dermer, Mayor

ATTEST:

By:_____
Robert Parcher, City Clerk

[SEAL]

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney 4-15-05 Date

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by David Dermer, as Mayor, and Robert Parcher, as City Clerk, of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

_____

Notary Public

_____

Type, Print or Stamp Name

My Commission Expires:

Signatures and acknowledgements appear on next two pages]

WITNESSES:

AR&J SOBE, LLC, a Florida limited liability company, by Berkowitz Limited Partnership, its manager, by Berkowitz, LLC, its general partner

_____
Print Name_____

By:_____
Jeffrey L. Berkowitz, Manager

_____
Print Name_____

_____
Print Name_____

_____
Print Name_____

[CORPORATE SEAL]

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by Jeffrey L. Berkowitz, as Manager of Berkowitz, LLC, a Delaware limited liability company, as general partner of Berkowitz Limited Partnership, a Delaware limited partnership, as manager of AR&J SOBE, LLC, a Florida corporation, a Florida limited liability company, in the capacity aforestated. He is personally known to me or produced a valid Florida driver's license as identification.

_____
Notary Public

_____
Type, Print or Stamp Name

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF LAND

Developer's Parcel:

Lot 1 through 16 in Block 104, of OCEAN BEACH FLORIDA, ADDITION NO. 3, according to the plat thereof as recorded in Plat Book 2, Page 81, of the Public Records of Miami - Dade County, Florida less the South 10 feet of the East 50 feet of Lot 8 and less the South 10 feet of the West 50 feet of the East 100 feet of Lot 8 and less the South 10 feet of Lot 9 in Block 104 of Ocean Beach.

Alley:

That certain 20 foot wide alley, bounded on the east by the west boundary of Lots 1 through 8, Block 104, Ocean Beach Florida Addition No. 3 according to the plat thereof as recorded in Plat Book 2, Page 81 of the Public Records of Miami-Dade County, Florida; bounded on the west by the east line of Lots 9 through 16, of said Block 104; bounded on the north by the north line of Lot 1 of said Block 104 projected westerly; and bounded on the south by the north line of the south 10 feet of Lot 8 of said Block 104 projected westerly

EXHIBIT B

DEPICTION OF TRANSIT FACILITY DEDICATION AREA

Transit Facility Dedication Area

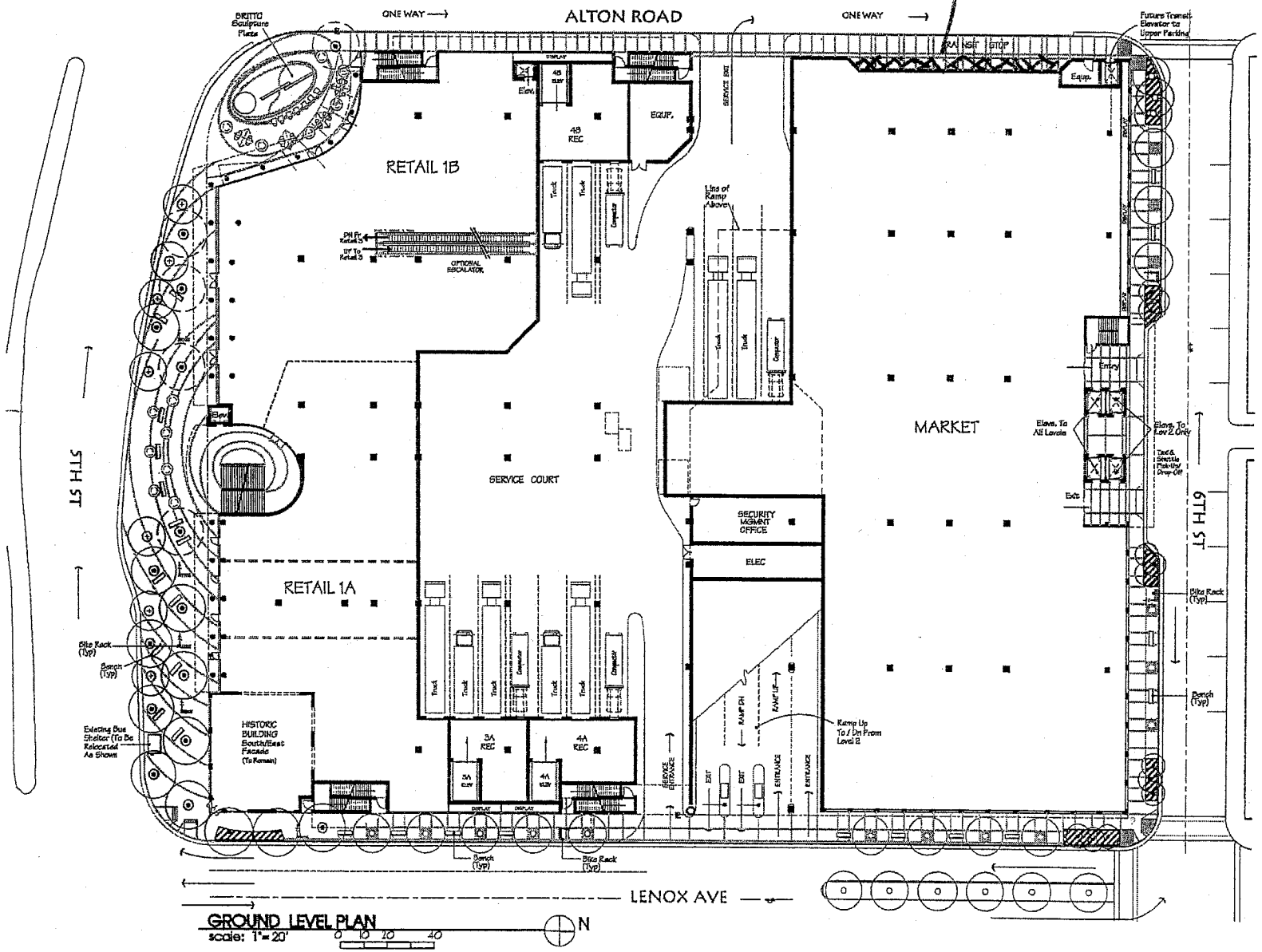


Exhibit "B"

robin bosco architects & planners, Inc.
2937 southwest 27th avenue/suite 207
miami, florida 33133/305-443-2545
fla reg: AA 0001768

STA ARCHITECTURAL GROUP
2525 NORTH MIAMI AVE. MIAMI, FL 33127
305.571.1611 FAX 305.571.1621

GROUND LEVEL PLAN

date: August 17, 2004

sheet: A-1

2004/08/16

EXHIBIT C

CITY'S TRANSIT FACILITY CONTRIBUTION

(Payment Schedule per Section 6.2.1 (vi))

In respect of each construction draw in respect of the City Spaces for Hard Costs, City shall pay Hard Costs reflected in said construction draw (after a holdback as determined by Developer's construction lender for Hard Costs only) multiplied by a fraction, the numerator and denominator of which are as set forth below. The numerator shall be the City's Transit Facility Contribution allocated for other than the Transit Facility Dedication Area, the Transit Facility Dedication Area Finishes and the City Elevator, and the denominator of which shall be the total amount of Hard Costs available for disbursement under Developer's construction loan plus the City's Transit Facility Contribution allocated for other than the Transit Facility Dedication Area, the Transit Facility Dedication Area Finishes and the City Elevator. As to the City Elevator, City shall fund 100% of the Hard Costs and Soft Costs reflected in each construction draw (after a holdback as determined by Developer's construction lender for Hard Costs only). As to the Transit Facility Dedication Area Finishes, City shall fund 100% of the Hard Costs and Soft Costs reflected in each construction draw (after a holdback as determined by Developer's construction lender for Hard Costs only). City's obligation to fund shall be conditioned upon (a) Developer's construction lender's simultaneously funding of the entire balance of the construction draw that City is funding and (b) the loan remaining "in balance" (as hereinafter provided), as determined by Developer's construction lender.

Simultaneously with the submission of a draw request, and supporting documentation (including whatever evidence the construction lender requires to evidence that the loan remains "in balance"--i.e. the undisbursed portion of the City's Transit Facility Contribution together with the undisbursed balance of the construction loan equals or exceeds the total amount required to achieve Substantial Completion of the Project), to Developer's construction lender, said materials shall be submitted to City. City shall approve or disapprove with detailed explanation such materials within 10 days of receipt; provided, however, that approval by Developer's construction lender (including a determination that the loan is "in balance") shall automatically be deemed approval by City (even if it previously disapproved). Upon approval of such materials by Developer's construction lender and upon satisfaction of such disbursement requirements as are required by the title insurance company to enable the issuance of title endorsements without exceptions for mechanics' liens, City shall fund its portion of City's Transit Facility Contribution that is allocable to other than the Transit Facility Dedication Area simultaneously with the funding by Developer's construction lender of its contribution so that, in the aggregate, the full amount of the draw request is funded.

Developer shall promptly respond to any reasonable requests of City for additional information, and respond to reasonable requests of City, pertaining to draw requests.

Any holdback for Hard Costs shall be funded by the City at the same time that Developer's construction lender funds same. Upon Substantial Completion, City shall promptly

fund any remaining balance of City's Transit Facility Contribution that has not been funded as of that date (regardless of whether or not the construction lender does so). The holdback amount shall be a minimum of 5%, to be disbursed no sooner than the time the portion of the work to which the holdback applies is substantially completed.

Anything in this Development Agreement to the contrary notwithstanding, the City shall fund the Transit Facility Dedication Area Finishes if the Transit Facility Dedication Area has been conveyed to the City and Developer has caused any of the Transit Facility Dedication Area Finishes for which Developer is seeking payment to be installed, even if this Agreement is terminated and even if City is entitled to reimbursement of other portions of City's Transit Facility Contribution, and this provision shall survive termination. The reason for the foregoing is that, once the Transit Facility Dedication Area is conveyed to the City, the City will benefit from the Transit Facility Dedication Area Finishes, regardless of whether or not this Agreement is subsequently terminated

EXHIBIT D

CONSTRUCTION GUARANTY

This Construction Guaranty is entered into as of the ___ day of _____, 200__ by Alan Potamkin, Robert Potamkin and Jeffrey Berkowitz (collectively, "Guarantors") in favor of the City Of Miami Beach ("City").

1. The Guarantors, jointly and severally, shall upon City's request fully and timely perform or cause to be performed any Obligations of AR&J Sobe, LLC ("Developer") which for any reason whatsoever are not performed by Developer as and when required of Developer under the Development Agreement between Developer and City dated _____, 2005 for the 5th and Alton Project (the "Development Agreement"). Within twenty (20) days after City's request therefor, the Guarantors shall commence any remaining construction of the Project and shall thereafter pursue such construction in accordance with the Plans and Specifications and the Development Agreement to completion. "Obligations" means the obligation of Developer (a) to construct the Improvements in accordance with the Plans and Specifications, the Requirements and the Development Agreement, (b) to furnish or cause to be furnished all labor and materials necessary to complete the Project in accordance with the Plans and Specifications and to pay and discharge any and all costs and expenses thereof as the same may become due and payable, (c) to complete the Project in a good and workmanlike manner on or before the Completion Deadline set forth in the Development Agreement free and clear of any mechanic's liens or claims of lien, (d) to provide such additional funds for the Project from sources other than the City as may be necessary in order to complete the Project in accordance with the Plans and Specifications, the Requirements and the Development Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Development Agreement.

2. After City's request for performance hereunder, the Guarantors shall be entitled to requisition and draw undisbursed funds remaining in the City's Transit Facility Contribution or that are otherwise payable by the City pursuant to the terms of the Development Agreement for the purpose of completing the Project, provided that such funds shall not be disbursed until Substantial Completion of the Project, and City may offset any funds that it is owned pursuant to this Guaranty from the amounts otherwise payable by the City on account of the City's Transit Facility Contribution. Guarantors shall be entitled to use insurance or condemnation proceeds for the restoration and repair of the Project.

3. If the Guarantors shall fail to perform or cause the performance of the Obligations upon City's request as and when required under this Guaranty, then: (a) City shall have the right (but not the obligation) in its sole discretion to complete the Project itself or through its agents or third parties (provided, however, that this right shall not be exercised so long as Developer's construction lender is proceeding in good faith to do so, it being the intent of Guarantors and the City that the City will do nothing to interfere with the Developer's construction lender's attempts to complete construction); and (b) the Guarantors shall promptly pay to City on demand a sum equal to the costs of performing the Obligations by others reasonably acceptable to City in excess of the undisbursed City's Transit Facility Contribution and other amounts payable by the City under the Development Agreement remaining at the time of City's request for performance

hereunder (Guarantor's funds shall be paid first, up to the full amount they are obligated to pay under this paragraph, and City shall promptly refund to Guarantors any excess funding by Guarantors, if any, once construction is completed, together with interest at the same rate as City is receiving on funds owed to it by Guarantors hereunder), together with interest on such demanded sum at the rate of 10% per annum, simple interest, commencing on the date of demand and continuing until paid, except that after judgment all such sums shall bear interest at the higher of 10% per annum or the rate prescribed by applicable law for judgments. All such payment obligations of the Guarantors shall be promptly paid by the Guarantors in lawful currency of the United States of America and in immediately available funds. All such payments shall be made without set-off, deduction or withholding for any reason whatsoever and shall be final and free from any claim or counterclaim of any Guarantor.

4. For purposes of this Guaranty, the Project shall not be considered "complete" until: (a) the construction of the Project (including all "punchlist" items) shall have been completed in accordance with the Plans and the Development Agreement and in compliance with all applicable laws, orders, rules, regulations and other requirements of any governmental authorities having jurisdiction over the Project; (b) all necessary certificates of occupancy, inspections and approvals for the Project shall have been issued by said governmental authorities; (c) an architect or engineer reasonably approved by City shall have certified to City in writing that the foregoing events (a) and (b) have occurred; and (d) the Property shall be free and clear of all liens or claims of lien for labor or materials or services furnished in connection with the construction or installation or equipping of the Project.

5. The Guarantors jointly and severally agree to pay City interest on any sum for which the Guarantors may be or become liable to City hereunder, from and after the date such sum first becomes payable from the Guarantors to City, until paid, at the simple interest rate of 10% per annum. The Guarantors jointly and severally agree to pay any reasonable expenses incurred by City in the collection or enforcement of this Guaranty, including costs and reasonable attorney's fees (including those incurred for appellate or administrative or bankruptcy proceedings) in the event that City shall be obliged to resort to the courts or require the services of an attorney to collect under this Guaranty.

6. The Guarantors consent and agree that Developer may alter, extend, change or modify the Plans and Specifications or any terms or conditions contained in any contract or subcontract or surety bond related to the Project, or may approve any change order, or may release or waive or compromise the obligations of any such contractor or subcontractor or surety, and that no such action by Developer shall in any manner affect this Guaranty or release the obligations of any Guarantor hereunder, regardless of whether any Guarantor has received notice of the same or has further consented thereto and regardless of whether City has approved the action of Developer in question, and the Guarantors hereby severally waive and relinquish any claim or defense against City based on any of the foregoing.

7. The Guarantors hereby jointly and severally waive any and all defenses to any action or proceeding brought to enforce this Guaranty or any part of this Guaranty, except the single defense that the Obligation in question has actually been performed. Without limiting the

foregoing in any way, but merely by way of illustration, each Guarantor hereby specifically waives any defense predicated upon:

(a) Incapacity, disability or lack of authority on the part of Developer or any other person; or

(b) Any change or modification in the Plans and Specifications, the Project budget or other cost breakdowns, any disbursement or construction schedules, or any construction contract or subcontract or surety bond related to the Project; or

(c) Any change or modification or extension or waiver of any term of the Development Agreement or any document executed by Developer or any Guarantor with respect to the Project, or any indulgence or forbearance or delay on the part of City in the enforcement of any term of the Development Agreement or any such document, or any other or further dealings or agreements between City and Developer or between City and any other Guarantor or guarantors or sureties for all or any part of the Obligations; or

(d) The fact that there may now or hereafter be other guarantors or sureties liable for all or any part of the Obligations, or that solvent persons other than Developer or the Guarantors may have undertaken the performance of all or any part of the Obligations, whether in connection with any surety bonds or any transfer of the Property or otherwise; or

(e) The full or partial release or discharge of Developer or any other present or future Guarantor or guarantors or sureties for all or any part of the Obligations; or

(f) Any other act or omission by City or failure by City to proceed promptly, or any other matter which might, but for this waiver by the Guarantors, be deemed a legal or equitable release or discharge of a surety or guarantor, regardless of whether such act or omission or failure or other matter varies or increases the risk of any Guarantor or affects the rights or remedies of any Guarantor.

8. City shall not be required to notify any Guarantor of (a) City's acceptance of this Guaranty, (b) any disbursements of funds before the Guarantors begin performance hereunder, (c) any change in the Plans and Specifications or any contract or subcontract or surety bond, (d) any modification of the Development Agreement or any other document executed by Developer or any other Guarantor in connection with the Development Agreement, nor (d) any default by Developer under the Development Agreement or by any other Guarantor under this Guaranty or by any other guarantors or sureties for all or any part of the Obligations. The Guarantors hereby jointly and severally waive presentment for payment, protest, notice of protest or dishonor, notice of default, and (except for City's initial request for performance by the Guarantors as specifically provided herein) any other notice or demand whatsoever before City commences to enforce its rights under this Guaranty, whether by judicial proceedings or in any other manner. City shall have no obligation whatsoever to disclose to any Guarantor any information City may now possess or hereafter obtain about Developer, regardless of whether (i) City has reason to believe that such information materially increases the risk of any Guarantor beyond that which such Guarantor intends to assume hereunder, or (ii) City has reason to believe that such

information is unknown to any Guarantor, or (iii) City has a reasonable opportunity to communicate such information to any Guarantor; the Guarantors understand and agree that the Guarantors are fully responsible for being and keeping informed of the financial condition of Developer and of all circumstances bearing on the risk of failure to complete the Project.

9. The liability assumed under this Guaranty shall not be affected by City's acceptance of any settlement or composition offered by Developer or decreed with respect to Developer by any court, either in liquidation, readjustment, receivership, bankruptcy or otherwise, except only to the extent that such settlement has resulted in actual performance of the Obligations, and then only to the extent of such performance. This Guaranty shall continue and remain in full force and effect in the event that all or part of any payment made by Developer in connection with the completion of the Project is recovered from City as a preference, fraudulent transfer or similar voidable payment under any bankruptcy or insolvency law.

10. The obligations of the Guarantors under this Guaranty are direct, unconditional and completely independent of the obligations of Developer. City may exercise any of its rights under this Guaranty, including without limitation bringing and prosecuting any action against the Guarantors jointly or severally or individually, without any requirement that City join Developer as a party to the action, or notify or make demand upon or proceed against or exhaust any other remedy against Developer, any other guarantor or surety for the Obligations, or any other person who might have become liable for the Obligations.

11. All rights, remedies and powers granted to City by applicable law or in this Guaranty or the Development Agreement or any other document executed by Developer in connection with the Development Agreement shall be separate and cumulative and may be exercised singly or concurrently on one or more occasions. No delay in exercising or failure to exercise any of City's rights or remedies shall constitute a waiver thereof, nor shall any single or partial exercise of any right or remedy by City preclude any other or further exercise of that or any other right or remedy. No waiver of any right or remedy by City shall be effective unless made in writing and signed by City, nor shall any waiver on one occasion apply to any future occasion, but shall be effective only with respect to the specific occasion addressed in that signed writing.

12. While this Guaranty remains in effect, no payment or performance under this Guaranty shall in any way or at any time entitle any Guarantor to any right, claim or cause of action against Developer, or to any right, title or interest in or to the Development Agreement or any rights of City, and each Guarantor hereby waives, for the benefit of City and Developer, any and all such rights (whether arising by way of subrogation, exoneration, reimbursement, participation, assignment, judicial decision, statute, constitutional provision, or otherwise) which such Guarantor might otherwise have had in the absence of this waiver and which would have otherwise entitled such Guarantor to be a "creditor" of Developer under the provisions of the U.S. Bankruptcy Code (Title 11, U.S. Code) or any other bankruptcy or insolvency law.

13. This instrument is a continuing, binding, absolute and unconditional guaranty of completion which shall remain in full force and effect until the first of the following events shall have occurred: (a) the construction and installation and equipping of the Project shall have been

completed in accordance with the Plans and Specifications and all other Obligations have been fully performed or (b) this Guaranty shall have been terminated by written agreement between City and the Guarantors or (c) the Development Agreement shall have terminated by its terms. Promptly upon request by the Guarantors, or any of them, after the first of the foregoing events has occurred, City will confirm in writing that this Guaranty has terminated and is of no further force or effect.

14. The agreements by the Guarantors contained in this Guaranty shall bind the Guarantors and their respective heirs, personal representatives, successors and assigns, jointly and severally.

15. City may not assign this Guaranty in whole or in part to anyone, other than a successor governmental entity (to whom the rights and benefits hereof shall inure).

16. Time shall be of the essence with respect to all of the provisions of this Guaranty.

17. Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

18. Whenever used in this Guaranty and unless the context otherwise requires, words in the singular include the plural, words in the plural include the singular, and pronouns of any gender include the other genders. All references in this Guaranty to numbered paragraphs refer to the paragraphs of this Guaranty, unless such reference specifically identifies another document. All references in this Guaranty to sums expressed in dollars refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency.

19. This Guaranty is executed under seal and is governed by, and shall be construed and enforced in accordance with, the laws of the State of Florida, except that federal law shall govern to the extent that it may permit City to charge interest from time to time at a rate greater than may be permissible under Florida law. Nothing contained in this Guaranty shall be construed as obligating any Guarantor in any way to be responsible for interest in excess of that which would be lawful for such Guarantor to pay under the circumstances.

20. The Guarantors and City hereby severally, voluntarily, knowingly and intentionally WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY in any legal action or proceeding arising under or in connection with this Guaranty, and in any legal action or proceeding concerning the Obligations, regardless of whether such action or proceeding concerns any contractual or tortious or other claim. Each Guarantor acknowledges that this waiver of jury trial is a material inducement to City, that City would not have entered into the Development Agreement without this jury trial waiver, and that such Guarantor has been represented by an attorney or has had an opportunity to consult with an attorney regarding this Guaranty and understands the legal effect of this jury trial waiver.

21. The Guarantors hereby submit to the jurisdiction of the state and federal courts in the State of Florida for purposes of any action arising from or growing out of this Guaranty, and further agree that the venue of any such action shall exclusively be laid in Miami-Dade County, Florida.

Executed on the day and date first above written.

_____

ALAN POTAMKIN

_____

ROBERT POTAMKIN

_____

JEFFREY L. BERKOWITZ

EXHIBIT E

MATERIAL PROVISIONS OF DECLARATION

1. General. The condominium will be structured so that, in addition to the units comprising the actual City Spaces (which shall be broken out into the City Supermarket Spaces and the City Non-Supermarket Spaces), the Developer Spaces, the City Elevator and the Retail Space, the "common areas" (including an equitable allocation of the Land) comprising the Garage will be a Unit (the "City Unit") to be owned by the City but installed, operated, maintained, insured, repaired and replaced (when necessary) by the Developer (subject to the payments provided for herein), and the "common areas" (including an equitable allocation of the Land) not comprising the City Unit will be a unit (the "Developer Unit") to be owned by the Developer. The term "Garage", as herein used, shall be the portion of the Improvements (including the City Spaces and the Developer Spaces) other than the Retail Space (i.e. the "Transit Facility"). It will include customary easements, including easements for access to parking spaces and the City Elevator by members of the public (subject to the limitations set forth elsewhere) and easements for support and for, encroachments.

It is the intention of the Parties' that the City and Developer reasonably cooperate with each other to implement a parking operation that promotes maximum use of the facility as a transit accessible facility that addresses the City's objective and desire to provide a parking alternative that links to other modes of transportation at a key entrance point of the City (and is mindful of the City's FTA funding source requirements, if applicable) while, at the same time, assuring sufficient and orderly parking for the Retail Space occupants, and the Parties shall reasonably consider implementing any alternatives suggested by each other to effect this intent.

2. Limitations on Use of Property

a. Rules. Reasonable nondiscriminatory and consistently enforced rules and regulations may be established by the Developer or, as to the Garage only, the City with prior input from and written approval of the Developer (which approval will not be unreasonably withheld, delayed or conditioned), related to the use of the Garage and/or other areas located on the Property. Without limiting the generality of the foregoing, nothing shall preclude Developer from installing devices (such as locks or computer entry cards) that will prohibit or limit access into the Retail Space or areas of the Garage that are wholly under its control (such as electric closets or janitor rooms, but not the Developer Spaces) from stairwells, elevators and other areas with respect to which access

rights exist for the benefit of the City. Further, nothing shall preclude a reasonable number of Developer Spaces (but not City Spaces) from being designated by Developer for short term parking (but only during Retail Hours, as hereinafter defined), nothing shall preclude a reasonable number of Developer Spaces and/or City Supermarket Spaces (but not City Non-Supermarket Spaces) from being designated by Developer for use by the customers of the supermarket occupant only (but only during the hours that the supermarket occupant is open for business) and nothing shall preclude a reasonable number of Developer Spaces (but not City Spaces) from being designated by Developer for use by the customers of Developer designated occupants of portions of the Retail Space only (but only during Retail Hours). During those hours that all of the Retail Space is closed for business, it is anticipated that substantially all of the Garage will be available for public parking purposes, subject nonetheless to the provisions contained herein for employee decal parking and the setting aside of specific locations therefor, if applicable.

b. Conduct of Work. All work performed in the Garage shall be performed in a prompt, good, workmanlike, first class, lien-free manner, and in a manner which minimizes disruption of or interference with the operation of all portions of the Property. Once commenced, such work shall be performed continuously and with due diligence and, promptly upon completion thereof, the area in which the work was performed, and any other areas affected thereby, shall be restored to at least the condition that they were in prior to the performance of such work. Developer will be responsible for maintenance, repair and replacement of all portions of the Property; it is not contemplated that the City will be performing any maintenance, repair or replacement work in respect of the Property, and the City shall perform no such work in respect of the Property without first consulting with and obtaining the prior written approval of Developer (which Developer may withhold in its absolute and sole discretion if Developer elects to perform such work itself but otherwise Developer will not unreasonably withhold, delay or condition approval). Any construction activity by the City within any portion of the Property shall require at least 48 hours written notice to Developer, except in the case of an emergency when only such notice as is reasonable under the circumstances shall be required. Any construction activity in the Garage shall be performed in a manner that minimizes inconvenience to and disruption of the operation of the Garage and the availability of parking spaces.

c. Plans Availability. Each Party shall retain all plans and specifications for any work performed by it, and shall make same available to the other Party from time to time upon reasonable request therefor (and the other Party may duplicate any such materials, at its cost). The foregoing is agreed to in recognition of the fact that such materials may facilitate the maintenance, repair and replacement of facilities within the Property. Each Party

disclaims any representation or warranty as to the accuracy of any such materials.

d. Compliance with Legal Requirements. Developer is responsible for maintaining, repairing and replacing all components of the Property, and Developer agrees that it will at all times while this Declaration is in effect promptly and fully comply with all Legal Requirements that pertain to the Property, whether or not any such Legal Requirements shall necessitate structural changes or improvements to or interfere with the use and enjoyment of the Property; provided, however, that the City shall comply with all Legal Requirements that pertain to the operation of the Garage, for which it is responsible, as well as with all Legal Requirements pertaining to work that it performs or activities in which it engages in respect of the Property. "Legal Requirements" shall mean (i) all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments, departments, commissions, boards and courts, and rules and regulations of any insurance rating organization or any other body exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Property or the sidewalks and curbs adjoining the Property or to the use or manner of use of the Property by the owners, tenants, or occupants thereof, including the Americans with Disabilities Act; and (ii) the requirements of all public liability, fire and other policies of insurance at any time in force with respect to the Property; and (iii) the provisions of any restrictive covenants now or hereafter affecting the Property. Each Party further agrees to cooperate with all reasonable requests of the other in respect of resolving issues pertaining to compliance with Legal Requirements. Either Party shall have the right to contest any Legal Requirements, or their applicability, through all available lawful means, and may defer compliance with any Legal Requirement while it is so contesting same in good faith and diligently, so long as the contesting Party takes all steps reasonably required to stay any enforcement action or otherwise prevent material adverse impact to the other Party or the Property.

e. Cooperation. All easements granted in this Declaration, and the use thereof, shall be deemed to be limited to the extent reasonably necessary to accomplish the purposes for which such easements are granted. Each Party agrees to cooperate with the reasonable requests of the other in furtherance of the spirit and intent of the matters addressed in this Declaration.

3. Initial Construction/Renovations/Use.

a. Changes by Developer. Subject to the provisions contained in this Declaration, after the Initial Construction has been completed, Developer shall have the right at any time and from time to

time, without the need for obtaining consent or approval from the City or anyone else, to change, rearrange, alter, modify, build upon or otherwise reduce the easement areas created by this Declaration and located on its portion of the Property, so long as the City's (and its licensee's and invitee's) easements and use rights to the City Spaces and City Elevator are not materially adversely affected. In the event any of same are accomplished with respect to the easement areas located on its portion of the Property, same shall automatically release the easement area which is so changed, rearranged, altered, modified, built upon or otherwise reduced, from this Declaration. In addition to the foregoing, Developer specifically shall have the right, without the need for obtaining consent or approval from the City or anyone else, to replace, alter or add to any existing buildings or structures located on its portion of the Property or to build any new buildings or structures on its portion of the Property as it may from time to time desire, regardless of whether or not the additions or replacements are constructed wholly or partly upon the easement areas created by this Declaration, subject to compliance with the provisions contained herein and provided that no change in the character of the Property as a retail/restaurant/office project shall be effected without the City's approval, which will not be unreasonably withheld, delayed or conditioned. If the foregoing requires relocation of any then existing utility or drainage facilities, or other components for which easements have been granted by this Declaration, Developer shall be responsible, at its cost, for relocating such utility or drainage facilities, or other components for which easements have been granted in this Declaration, and same shall be accomplished in a manner that minimizes disruption of (and, to the extent reasonably possible, avoids interruption of) service and accessibility for maintenance and in a manner so as to minimize inconvenience to and disruption of the owners and occupants of the remaining portions of the Property and the operation and availability of parking spaces in the Garage. Notwithstanding the foregoing, Developer shall not effect any of the foregoing if doing so would result in a material reduction in the number of parking spaces at the Property (any reduction shall not affect the City Spaces) or materially and adversely impact access to said parking spaces or ingress/egress to and from the Garage.

b. Weight Loads. Neither Party shall permit the weight load from any portion of its Property to exceed the load-bearing capacity of the applicable portion of the structure located on the Property.

c. Odors. Neither Party shall permit any offensive odors to exist on the Property; provided, however, that both Parties recognize that it is difficult to control odors within the loading and compactor/trash areas due to the nature of the use of those areas and, although reasonable steps to minimize odors from those areas will be taken, the provisions of this subparagraph shall be interpreted to give

due consideration to the difficulty in controlling odors in these areas.

d. Use of Garage. The Garage shall be utilized solely for the parking of motor vehicles and incidental purposes (including shopping cart and other storage areas reasonably designated by Developer). Developer shall have the exclusive right to install vending, ATM, pay telephone and similar machines within the Garage (but shall only install them in portions of the Retail Space or Developer Unit unless City consents to their installation in portions of the City Unit, which consent will not be unreasonably withheld, delayed or conditioned), and all revenues derived therefrom shall belong solely to Developer and all costs associated therewith shall be Developer's sole responsibility (but this shall not require separate metering or submetering of the minimal utility service required therefor). Both Parties shall take all steps reasonably possible to prevent soliciting in the Garage.

e. Hazardous Materials. Each Party agrees that it will not generate, use, store or dispose of any hazardous materials or substances on any portion of the Property except in full compliance with all Legal Requirements. Hazardous substances or materials for purposes of the foregoing shall mean any substances or materials that are from time to time designated as such by, or whose generation, use, storage or disposal is regulated pursuant to, any Legal Requirements. If either Party receives any notice of the release of a hazardous material or substances affecting the Property, it shall promptly notify the other Party, and each Party shall cooperate with all reasonable requests of the other Party in respect of remediation, at no cost to the Party being requested to cooperate except to the extent such Party breached the provisions of the first sentence of this subparagraph (e).

f. Government Compliance.

(i) The Parties acknowledge that the City (in its regulatory capacity and not as a Party to this Declaration) or other applicable governmental authorities may require the joinder by both Parties in applications for permits to perform work within the Property. Each Party desiring to perform work shall, if so required, submit any such applications to the other Party for review, approval and joinder, which will not be unreasonably withheld, delayed or conditioned, provided the work for which the permit is being sought is in accordance with the terms of this Declaration (including compliance with all Legal Requirements, including approvals required by City in its regulatory capacity). The Parties further acknowledge being aware that, in connection with permitting pertaining to any portion of the Property, the Party applying for such permit may have to submit plans for the entire Property and, if this is required by applicable

governmental authorities, each Party shall cooperate with the other, at no cost to the cooperating Party, in accomplishing this in a manner that minimizes delay in the application process.

(ii) Each Party shall, within five (5) business days of receipt, furnish to the other Party a copy of any notices received from any governmental authority pertaining to any violation of Legal Requirements, compliance with respect to which is or may be the responsibility of the other Party.

4. Operation, Maintenance, Repair and Replacement.

a. Generally. Subject to the limitations and reimbursement/contribution provisions contained elsewhere in this Declaration, City agrees to operate the Garage and Developer agrees to maintain, repair, insure and, when necessary, replace, all portions of the Property (including the Garage), so that same are at all times in first class order, condition and repair, consistent with similar first class facilities of similar stature to that of the Property in the South Florida area. In any event, the standards for maintenance, repair and replacement of the Garage shall be no less than the standards maintained in municipal parking garages that are operated by the City elsewhere within Miami Beach.

b. By Developer. The foregoing obligation of Developer to maintain, repair, insure, and, when necessary, replace the Property (including the Garage), shall include, without limitation: (i) keeping all portions of the Property maintained in a clean, unlittered, orderly, watertight and sanitary condition; (ii) removing, to the extent practicable, surface waters; (iii) keeping all marking and directional signs, if any, on the Property clear, distinct and legible; (iv) maintaining, mowing, weeding, trimming and watering all landscaped areas; (v) maintaining and operating exterior and public area lighting at reasonable levels during hours of darkness; (vi) painting and otherwise maintaining the exterior surfaces of the buildings on the Property; (vii) providing such security as Developer reasonably deems appropriate; and (viii) generally maintaining the structure and building systems of the buildings on the Property. The City shall be responsible for initially purchasing and installing all systems, equipment and signage reasonably designated by it (but subject to Developer's approval of the systems, equipment and signage to be installed, and the costs thereof, not unreasonably withheld) in respect of the operation of the Garage (ex. access control devices, security cameras and monitors/recorders, money collection equipment, entry and exit signage), initially at its sole cost and without initial contribution by Developer (but subsequent maintenance, repair and replacement shall be an Operating Expense; and one half of the initial purchase and installation cost shall be amortized over ten years

together with a finance charge computed by utilizing the 10-year T-bill rate in effect at the time the initial cost (or the material portion thereof) is incurred and Developer shall pay to City annually in arrears the amount so amortized); the purchase and installation, as well as the subsequent maintenance, repair, insuring, obligation to pay taxes on and replacement of such systems, equipment and signage, shall be coordinated with Developer, who may from time to time elect, in Developer's sole discretion to maintain, repair, insure, pay taxes on or replace any of such systems, equipment and signage, with the costs thereof (regardless of who performs same) being allocated as an "Operating Expense" of the Garage.

c. By City. The foregoing obligation of the City to operate means that the City shall provide all personnel, systems and equipment (subject to the other provisions of this Declaration) reasonably required to control vehicular access to and from the Garage, collect compensation and implement a reasonably and mutually agreed upon parking validation system. The quantity and types of equipment and personnel shall be designated by the City, subject to reasonable prior approval by the Developer of budget and other matters pertaining thereto. Developer may at any time and for any reason in Developer's sole but reasonably exercised business judgment (i.e. if Developer presents a reasonably objective request, the City shall not have the authority to second guess Developer) request personnel changes, which shall be promptly implemented by the City. Both Parties acknowledge being aware that, in order for the Garage to operate for its intended purpose and for the Retail Space to be successful, sufficient and orderly employee and customer parking will be required and, accordingly, the following limitations shall be applicable:

(i) All parking in the Garage will, unless otherwise approved by Developer in its sole but reasonably exercised business judgment, be solely (A) validated parking for customers of the Retail Space (including restaurant patrons, at Developer's sole option), (B) decal/access card parking for employees of the Retail Space (including restaurant employees), (C) decal/access card parking for transit users and other third parties, with transit users being given priority (the extent of which shall be initially determined within 120 days after the earlier of one year after Substantial Completion or when 90% of the square footage of the Retail Space is initially occupied for normal business operations (the earlier time frame shall be defined as "Full Occupancy"), and shall be adjusted at least quarterly with a view toward maximizing Garage revenues and general public transit and non-transit parking consistent with demonstrable Retail Space parking demand; in this regard, the maximum number of decals/access cards to be allowed during Retail Hours, as hereinafter defined, shall be consistent with the City's policy for other City owned or operated garages unless Developer approves to the contrary in its sole

discretion), (D) special event permit parking for third parties (including special events organized by Developer of the occupants of the Retail Space, with which City shall reasonably cooperate to facilitate implementation), or (E) timed ticket parking for the public, both transit and non-transit users (but during Retail Hours, as hereinafter Defined, unless Developer approves, which Developer may do or refuse to do in its sole but reasonably exercised business judgment, the rate shall be based on a sliding scale amount that discourages long term parking to the extent reasonably necessary to assures sufficient short term customer parking for the occupants of the Retail Space and their customers). Anyone parking in the Garage that does not have a decal/access card (including a transit user decal/access card), special event permit, is not validated by an occupant of the Retail Space, or is so validated but parks longer than the designated validation period (two hours maximum), will be subject to payment of a mutually and reasonably agreed upon sum (based on a schedule listing different circumstances and the agreed upon sum for each, if applicable, one of which circumstances will be hourly ticketed parking, which shall be charged based on a sliding scale as aforestated) that is intended to control parking in order to effectuate the mutual intent of the Parties as set forth in the last sentence of **subsection 4(c)(ii)** below. Although it is intended by the Parties that hourly parking will be permitted if the parking requirements of the Retail Space are being met, the foregoing limitations on timed ticket parking during Retail Hours are included (and needed) to assure that there will at all times be reasonably sufficient and orderly parking for the Retail Space occupants and their customers, which the Parties mutually agree is essential to the success of the Retail Space and the public/transit Garage operation. All users of the Garage pursuant to subparagraph (C) above shall be advised in the parking contract which they sign that use of the Garage may be restricted during special events (unless Developer reasonably approves of the omission of such provision). City shall post notices and reasonably enforce such restrictions during such special events.

(ii) Within 120 days after Full Occupancy, the Parties shall mutually, reasonably and in good faith, determine the number of non-employee decals/access cards (including transit decal/access cards) and special event parking passes to be outstanding for parking in the Garage at any given time (the "Public Passes") during "Retail Hours" (defined as hours when at least 100,000 square feet of the Retail Space is open for business); provided, however, that if code required parking for the Retail Space at any given time exceeds 643 [the contemplated number of Developer Spaces and City Supermarket Spaces] spaces, and further provided that any code required parking in excess of 643 shall have deducted therefrom the code required parking for any occupant who is not entitled to validate parking for its customers (for example, if a 100 seat restaurant occupant causes the 643 code required parking to

be exceeded by 40 parking spaces, its 40 spaces shall only be added to the foregoing 643 figure if said occupant is entitled to validate customer parking)(employee decal validation shall in any event be available), Developer shall pay during such time period an amount (the "Public Parking Amount") equal to the lesser of $55 per month (such rate to increase by 2.5% per year starting at the same time that the Contribution, as hereinafter defined, starts increasing) or the lowest per month contract rate per month in the Garage for comparable terms per code required space in excess of 643, as so reduced (which payment shall be included in Revenue, as defined below) and the maximum number of Public Passes shall be reduced by the number of parking spaces for which Developer pays the Public Parking Amount as aforestated (calculation of code required parking shall be calculated or recalculated at the time of issuance of initial certificates of occupancy for 100% of the Retail Space, and payments for any Public Parking Amount shall not commence until such calculation or recalculation is made). Thereafter, the maximum number of Public Passes will be reasonably and in good faith adjusted by agreement between the Parties based on actual usage patterns at least quarterly (with a view toward maximizing Garage revenues and public/transit parking consistent with demonstrable Retail Space parking demand; provided, however, the maximum number of decals/access cards to be allowed during Retail Hours shall be consistent with the City's policy for other City owned or operated garages unless Developer approves of a different number in its sole discretion). Developer shall have a continuing and on-going priority right over anyone else to purchase up to 150 Public Passes (exclusive of the Public Passes purchased by Developer, if any, to satisfy code requirements) for use by the Retail Space occupants, their customers and employees during Retail Hours at a cost per Public Pass that is the same as the lowest comparable rate offered to third parties in the Garage. Developer may, from time to time as needed, purchase all or any Public Passes that Developer is entitled to purchase and/or surrender any or all Public Passes that Developer shall have purchased (upon surrender, those Public Passes that were so surrendered shall once again be available for sale to the public). If at any time, the code required parking falls below 643 parking spaces by virtue of a change in use of the contemplated supermarket user, those parking spaces that are no longer needed to satisfy code shall be available for public/transit parking, subject to the limitations contained elsewhere in this Declaration. The maximum number of Public Passes that may be outstanding during other than Retail Hours shall be reasonably, in good faith and mutually agreed upon by the Parties, subject to the other limitations set forth in this Agreement. Decals/access cards (including those for transit users) and special event permits will be coded separately for parking during Retail Hours and other hours to maximize potential Garage revenues while assuring at the same time reasonably sufficient and orderly

parking for the Retail Space occupants. It is the intent of this subparagraph that the City and Developer reasonably cooperate with each other to implement a parking operation that promotes use of the Garage as a transit accessible facility, maximizes the revenues of the Garage and addresses the City's objective and desire to provide a parking alternative that links to other modes of transportation at a key entry point of the City (and is mindful of the City's FTA funding source requirements, if applicable) while, at the same time, assuring reasonably sufficient and orderly parking for the Retail Space occupants, and the Parties shall reasonably consider implementing any alternatives suggested by each other to effect this intent.

(iii) During Non-Retail Hours, public, transit and valet parking shall be promoted pursuant to a reasonably and mutually agreed upon joint marketing effort of City and Developer, the cost of which marketing effort shall be deemed an ''Operating Expense'' of the Garage. A system for decals, parking passes, tickets or other monitoring of valet usage (including valet for any restaurant occupants of the Retail Space) shall be implemented as reasonably and mutually agreed upon by the Parties so that valet operators are only able to utilize the number of parking spaces for which they pay/pre-pay. City shall in good faith endeavor to provide a shuttle service or other public transportation for Garage users to encourage parking during non-Retail Hours if there is a reasonable demand for same such that doing so is economically practical (the cost for which shall not be included in "Operating Expenses" for the Garage).

(iv) The customers of the occupants of all of the Retail Space and the employees of all of the Retail Space shall be entitled to park in the Garage free of charge, subject to the validation and decal provisions of this Declaration and payment of the agreed upon annual operating expense contribution (the "Contribution") for parking spaces by the owner of the Retail Space (which may be passed through to the occupants of the Retail Space). The amount of the Contribution shall initially be equal to the number of Developer Spaces (contemplated to be 546), less the difference between the total number of City code required parking spaces allocable to the contemplated supermarket and the number of City Supermarket Spaces (contemplated to be 78, calculated by taking the 175 total contemplated supermarket spaces less the 97 contemplated City Supermarket Spaces) and also less the number of City code required parking spaces allocable to public elevators, exit stairs and loading areas (contemplated to be 28), and the result of this subtraction shall be multiplied by 55 times 12 (the complete anticipated calculation, in arithmetic symbols, would be ((546-78)-28) x 55 x 12 = $290,400.00) per annum plus sales tax, if applicable (currently, sales tax would not be applicable, and the Parties shall reasonably cooperate with each other to restructure the method for payment/collection of the Contribution in order to minimize

the obligation to pay sales tax in the event of a change in law) and shall be paid in 12 monthly installments on or before the fifth day of each month in advance commencing on the date the Garage first opens for normal business operations. The amount of the Contribution shall increase by 2.5% (over the Prior year's Contribution) per year starting on the January 1 immediately following the third anniversary of Full Occupancy of the Retail Space. Rates for non-employee decal/access card and special event permits shall be reasonably and mutually agreed upon by the Parties, but shall not in the absence of reasonable justification be less than the rates charged by the City for parking in municipal parking garages operated elsewhere in Miami Beach by the City.

(v) City shall not be entitled to assign or otherwise delegate responsibility for operating the Garage to any other person or entity (except that City may enter into a contract with a third party for the operation of the greater of one-half (or more) or three (3) of the parking garages operated by the City within Miami Beach and include operation of the Garage in such contract-the Garage shall not be included in determining the threshold for number of garages (three/one-half) is met). City shall operate the garage solely utilizing City employees or employees hired pursuant to a contract with the City for the operation of the greater of three or one-half (or more) of the parking garages operated by the City within Miami Beach. If, at any time, City decides that it no longer desires to operate the Garage, City shall allow Developer at its sole option to either operate, or engage a third party contractor designated by Developer and reasonably acceptable to City to operate, the Garage.

(vi) The City and Developer shall reasonably and mutually allocate specific portions of the parking spaces in the Garage for specific types of users (ex. long term parkers (including public parking/transit users) and Retail Space employees will park on the upper levels, while short term parkers will park on the lower levels; further, specific occupants of the Retail Space, such as the contemplated grocery supermarket, may be designated a specific area for its customer parking, at Developer's option, to the exclusion of others), if reasonably required for the efficient operations of the Garage, and shall take reasonable steps (including, potentially, towing in the Developer's reasonable discretion) to enforce such allocations.

(vii) The City and Developer shall reasonably and mutually work with each other, and Developer shall use good faith and reasonable efforts to get the cooperation of the occupants of the Retail Space, to avoid, to the maximum extent possible, parking in the Garage by Retail Space employees at times when they are not actually working (unless they pay the applicable non-validation/decal/access card rate) and validated parking in the Garage other that by Retail

Space customers while they are actually shopping at the Retail Space. The intent of the foregoing is to promote public/transit parking and maximize revenue from the Garage operation, while providing validated (no cost to the actual customers and employees) parking to employees and customers of the Retail Space only when they are working/shopping at the Retail Space.

(viii) Anything contained in this Declaration to the contrary notwithstanding, in the event Developer determines for any reason in Developer's sole and absolute discretion at any time up until eighteen months after Full Occupancy, and thereafter in Developer's sole but reasonably exercised business judgment (i.e. if Developer presents a reasonably objective case, the City shall not have the authority to second guess Developer), that (A) the level of parking demand generated by Developer's tenant's and their customers and employees, together with the demand generated by City permits or timed ticket parking is such that commitments made by Developer to its tenants related to adequacy of parking are, or are alleged to be, breached, or (B) the adequacy of parking for tenants and their customers and employees has resulted in complaints by Developer's tenants, or their customers or employees, relative to the sufficiency of available parking, or (C) the concept of joint operational control of the Garage as contemplated by this Agreement is not working effectively or efficiently (each, an "Issue"), Developer may notify the City (the "Notice") of Developer's determination of the existence of an Issue. Within 15 days after the Notice, Developer and City shall meet to discuss alternative courses of action for rectifying the Issue, which alternatives may include adoption of any of the discretionary controls set forth in subparagraph 4(c) of this Agreement such as limiting timed ticket parking during designated hours, increasing timed ticket parking rates during designated hours or reducing the number of Public Passes during designated hours, or other alternatives that may be suggested by either of the Parties. If they are unable to agree on a course of action for attempting to obtain a resolution for the Issue, and during the time the course of action to attempt to obtain a resolution for the Issue is being implemented, if requested by Developer, City shall immediately adopt (on an interim basis) any proposal suggested by Developer to alleviate the effects of the Issue while the Developer and City continue to meet to work out a resolution for the Issue in a manner that is reasonably satisfactory to both (the course of action, if any, that results in a permanent alleviation of the effects of the Issue shall be referred to as the "Resolution"). If a Resolution is reached, Developer's exercise of its right to require reconveyance/conveyance as provided below shall be inapplicable and no Demand, as hereinafter defined, may be made. Developer and City each agree to work diligently and in good faith to attempt to reach a Resolution. If, after utilizing diligence and good faith to attempt to reach a Resolution, a mutually acceptable Resolution has not been

reached, Developer may, upon 60 days' notice to the City (the "Notice Period"), demand (the "Demand") that the City re-convey the City Spaces, City Unit, City Elevator and other components of the Transit Facility (which, for clarification, does not include the Transit Facility Dedication Area) to Developer or its designee (in which case City shall also convey at no additional cost, other than twice (once for Developer's unamortized portion and the other for the City's unamortized portion) any remaining unamortized cost over the first 10 years that Developer has not paid as contemplated in **Section 4(b)** above, all systems, equipment and signage utilized in connection with the operation of the Garage to Developer or its designee, regardless of who initially paid for or installed same). If Developer makes the Demand, the reconveyance/conveyance provided for below shall occur and, until the time of reconveyance/conveyance (or rescission of exercise, if applicable), the City shall continue in effect any proposal suggested by Developer to alleviate the effects of the Issue. The Demand may only be made if Developer has purchased at least 150 Public Passes during the preceding 30 day period and that has not alleviated the effects of the Issue. Further, any Demand made by Developer shall be deemed withdrawn if, within 30 days thereafter, City agrees to adopt for so long as is necessary any proposal submitted by Developer to alleviate the effects of the Issue. Upon Developer's making the Demand, such reconveyance/conveyance by the City to Developer or its designee shall be made in exchange for a payment by Developer to City of:

(AA) in the case of exercise by Developer named herein or an affiliate of this right on or before 18 months after Full Occupancy (regardless of when the reconveyance/conveyance occurs), and provided the entire Property is not sold or otherwise transferred (excluding by foreclosure or deed in lieu thereof) to an unaffiliated third party purchaser within one (1) year after such exercise (if such a sale or transfer occurs, the sales price shall be recalulated within 30 days after such sale or transfer based on (BB) below, and this right to recalculate shall survive such sale or transfer), the full amount of the City's Transit Facility Contribution, less the portion thereof allocated to the Transit Facility Dedication Area and the Transit Facility Dedication Area Finishes, and adjusted to exclude payment for the City Elevator or any City Spaces previously conveyed/reconveyed to Developer or lost through condemnation, together with simple interest thereon at the rate of 4% per annum from the date of each disbursement until the date paid or

(BB) in the case of exercise by Developer named herein or an affiliate of this right on or before 18 months after Full Occupancy (regardless of when the reconveyance/conveyance occurs), and provided the entire Property is sold or otherwise transferred

(excluding by foreclosure or deed in lieu thereof) to an unaffiliated third party purchaser within one (1) year after such exercise, the greater of (M) the Fair Market Value of each City Space at the time of exercise by Developer of said right to require reconveyance/conveyance as aforestated multiplied by the "Fraction", as hereinafter defined, plus the City's Transit Facility Contribution attributable to the City Elevator or (N) the full amount of the City's Transit Facility Contribution, less the portion thereof allocated to the Transit Facility Dedication Area and the Transit Facility Dedication Area Finishes, and adjusted to exclude payment for the City Elevator or any City Spaces previously conveyed/reconveyed to Developer or lost through condemnation, together with interest thereon at the greater of (X) the average yield on an annualized basis generated by investments actually made by the City in accordance with the City's Investment Policy and Procedure (designed to assure the preservation of principal, a copy of which has been furnished to Developer) during the like period of time or (Y) simple interest at the rate of 4% per annum, in each case from the date of each disbursement until the date paid or

(CC) in the case of exercise by Developer named herein or an affiliate of this right after 18 months after Full Occupancy (regardless of when the reconveyance/conveyance occurs) or in the case of exercise by a successor Developer that is not affiliated with Developer named herein at any time, the greater of (X) the full amount of the City's Transit Facility Contribution, less the portion thereof allocated to the Transit Facility Dedication Area and the Transit Facility Dedication Area Finishes, and adjusted to exclude payment for the City Elevator or any City Spaces previously conveyed/reconveyed to Developer or lost through condemnation, together with interest thereon at the greater of (i) the average yield on an annualized basis generated by investments actually made by the City in accordance with the City's Investment Policy and Procedure (designed to assure the preservation of principal, a copy of which has been furnished to Developer) during the like period of time or (ii) simple interest at the rate of 4% per annum, in each case from the date of each disbursement until the date paid, and (Y) the Fair Market Value of each City Space at the time of exercise by Developer of said right to require reconveyance/conveyance as aforestated multiplied by the Fraction plus the City's Transit Facility Contribution attributable to the City Elevator.

In addition to the amount to be paid pursuant to (AA), (BB), or (CC), as applicable, twice (once for Developer's unamortized costs and once for City's unamortized cost) any remaining unamortized cost over the first 10 years that Developer has not paid, as contemplated above, on all equipment and signage utilized in connection with the operation of the Garage shall be paid to the City. The Fraction shall be 56%, which

was calculated based on the cost per City Space actually paid by the City to Developer in contrast with the agreed upon value of each City Space in the Garage based on criteria approved by the Parties. City shall, within the Notice Period (or such reasonably longer time frame as Developer shall request, in order to enable Developer to put together its funding for the payment to be made by it), re-convey the City Spaces and City Elevator and convey the aforestated systems, equipment and signage to Developer or its designee free and clear of all liens and otherwise subject only to the matters affecting those spaces, equipment and signage at the time of Developer's conveyance of those spaces to, or purchase of such systems, equipment or signage by, the City and any matters created by, joined in, rendered against or requested by Developer. Upon such re-conveyance/conveyance, City and Developer shall adjust all revenues and expenses collected or incurred under this Declaration as of the date of the re-conveyance/conveyance, and City shall turn over to Developer or its designee control of the segregated account into which Revenues are to be deposited pursuant to this Declaration, and all monies therein, and City shall cooperate with Developer or its designee in the orderly turn-over of control of the Garage. The payment to be made by Developer to the City under this subparagraph (viii) shall be paid in cash at the time of the reconveyance/conveyance, and Developer shall be liable for payment of any transfer taxes (documentary stamps, surtax or otherwise) that may be payable on said transfer, if any are payable. At any time prior to the reconveyance/conveyance contemplated hereby, Developer may rescind its exercise of the right to require such reconveyance/conveyance.

Notwithstanding anything to the contrary provided in this Declaration, it is the intent of the Parties that the Developer's right to require a conveyance/reconveyance of the City's interests pursuant to this **subparagraph 4(c)(viii)** shall exist only under the limited circumstance in which The Developer determines as aforestated that there are parking Issues and a Resolution satisfactory to the Developer as aforestated has not been found. This **subparagraph 4(c)(viii)** is not intended to afford Developer an opportunity to reacquire the City's interests solely to take advantage of the appreciation in the value or parking spaces or to recapture a larger share of the revenues generated from the Garage.

d. Standard for Operation. Developer shall operate, maintain and replace, or cause to be operated, maintained and replaced, all portions of Property (including the Retail Space) in a first class manner. City shall operate access, validation and collection systems for the Garage in a first class manner. All portions of the Property shall be operated in accordance with the limitations contained in this Declaration.

e. Collection of Revenues and Allocation of Operating Expenses.

(i) All revenues from the Retail Space shall be paid to and be the sole property of Developer. All "operating expenses" of the Retail Space shall be borne by Developer without contribution by the City and without being paid from the Revenue of the Garage.

(ii) All revenues from the operation of the Garage (the "Revenue"), including the Contribution, shall be deposited by City and/or Developer, as applicable, in a dedicated bank account (the "Operating Account") and no other sums shall be co-mingled with the funds in said account (provided, however, that for expenses that are partially allocable to the Garage and partially allocable to the Retail Space, Developer may deposit money into the Operating Account to cover the portion allocable to the Retail Space and then cut one check to the applicable provider of service out of the Operating Account). The Operating Account shall initially be funded with an estimated three months of Operating Expenses, with the City funding the City Fraction and the Developer funding the balance. One twelfth of the annual Contribution shall be deposited in the Operating Account not later than the fifth day of each month, in advance. All Revenues of the garage that are collected by the City shall be deposited into the Operating Account within one business day (revenues received on Friday, weekends and legal holidays will be deposited no later than the next business day) of their collection. If at any time the Operating Account has insufficient sums to cover Operating Expenses, the Parties shall deposit the deficiency within three (3) business days after notice (said deposit being allocated to City based on the City Fraction, with the balance to the Developer). If either Party fails to pay any amount payable by it into the Operating Account when due, said amount shall accrue interest from the date due until paid at the Default Rate, and the Party not in default of its payment obligation shall be entitled to Collection Costs for enforcement of the other Party's payment obligation.

(iii) The Operating Account shall be set up so that it is accessible by the City and Developer by computer, so that each will at all times know the status of the Operating Account. The Operating Account shall be established with the Institutional Lender holding the financing encumbering the Retail Space or its designee, if required by the terms of said financing, or otherwise with another Institutional Lender (which shall be a bank or savings and loan association, unless mutually agreed to the contrary) mutually and reasonably agreed to by the Parties. City and Developer, each acting alone, will have signatory authority on the Operating Account, although Developer shall be the primary signatory and City shall not, without prior notice to Developer, sign any check or other item pertaining to the Operating

Account as a signatory. The cost of maintaining, repairing, insuring, and, when necessary, replacing those portions of the Property (or components thereof), including the Garage, as enumerated on **Schedule 1** attached hereto, in the percentages noted on said Schedule, whether or not technically a part of the Retail Space (the "Operating Expenses"), shall be allocated to the Garage and shall ultimately be payable by the City and Developer in proportion to the number of City Spaces and Retail Spaces owned by each from time to time in relation to the total of all Retail Space and City Spaces in the Garage from time to time (initially, the City will pay 535/1081=49.49% and Developer will pay 50.51% based on the contemplated 1081 total parking spaces in the Garage; the City's share shall hereinafter be referred to as the "City Fraction", and shall be adjusted from time to time if and at the time, if any, that the ratio of City Spaces to Developer Spaces changes). Operating Expenses shall include all costs incurred for preparing annual tax returns and financial statements for the condominium association of which the Garage is a part and all of the costs and fees, if any, payable to the Florida Division of Condominiums on account of the Property being a condominium. Operating Expenses shall also include any costs actually incurred by Developer during the Extended Warranty Period, as hereinafter defined (and Developer may issue its construction warranties, at no cost other than the actual costs of warranty work performed to maintain, repair or replace, for the period of time beyond the time frames that are typical for commercial construction (the "Extended Warranty Period"), to the extent extension of such time frames is required under the Condominium Act of Florida, in lieu of the contractor extending its construction warranties for such time frame) for performing any warranty work during the Extended Warranty Period. To the extent any item of Operating Expense is not enumerated on said Schedule 1, the Parties shall in good faith and reasonably agree on an equitable allocation between the Retail Space and the Garage, using the methodology used for allocating the items that are set forth on such Schedule 1. The Parties agree that Operating Expenses shall include, without limitation, any insurance deductibles (provided they are in accordance with **Section 6(b)** below) and capital expenditures when paid, but shall not include the costs of Initial Construction, any costs covered by insurance or condemnation award proceeds that are actually collected, or costs of correcting defective work or materials (except during any extension period beyond one year for initial construction warranties under the Condominium Act). Operating Expenses shall include the costs of routine day to day maintenance of the City Elevator and Transit Facility Dedication Area Finishes, such as sweeping and cleaning. Operating Expenses shall specifically exclude all other maintenance costs (including the costs of a service contract for maintenance of the City Elevator, which service contract shall be subject to City's reasonable approval), and all costs of repairing and replacing, the

City Elevator and Transit Facility Dedication Area Finishes, which shall be paid for in full by the City based on a budget reasonably approved by the City and reconciled annually.

(iv) Developer shall consult and coordinate with City in preparing an annual budget for Revenue and Operating Expenses, which budget shall be prepared and finalized (with the approval, not unreasonably withheld, conditioned or delayed, of City and Developer) at least 60 days before the year end for the prior budget (the budget year shall be the calendar year unless mutually agreed to the contrary), or the budget for the prior year shall govern for purposes of the monthly budgeted payments to be made for the next calendar year (until a budget for the current year is furnished and approved, subject to quarterly and cumulative year-end reconciliation to reflect actual costs). The budget as so finalized shall include City's figures for personnel and any other expenses incurred or anticipated to be incurred by City. City shall promptly notify Developer if the actual personnel or other costs incurred by it deviate by more that 5% from the amount reflected on such approved budget. Developer shall provide City with quarterly and annual reconciliations, including reasonably requested supporting documentation, within 30 days after the end of each quarter (60 days in the case of the annual reconciliation) and the amount of any adjustment resulting from such reconciliation shall be paid by the applicable Party to the other within 30 days after the applicable reconciliation is furnished to City. Developer agrees that the costs incurred by it for Operating Expenses (and City agrees that the costs incurred by it for personnel) shall be consistent with the costs incurred by similar facilities of similar size in the vicinity of the Property (City facilities, in the case of costs to be incurred by the City), taking into consideration the nature of the materials utilized in the construction of the Property and the levels of use of the Property. In order to allow Developer and City to verify the charges made by the other hereunder, each agrees to make its books and records solely pertaining to such charges available for inspection at reasonable times and on reasonable advance notice for review by the other, no more than three times per year, upon notice furnished to the Party whose records are being reviewed, within 180 days after receipt of the annual reconciliation for the applicable year (and the audit must proceed promptly thereafter and be completed within 1 year after receipt of the annual reconciliation for the applicable year). An audit or review shall be performed annually by City or Developer personnel or an independent certified public accountant reasonably acceptable to City and Developer and who is not paid on a contingent fee basis. In the event either Party is successful in disputing any amount paid by it under protest, the successful Party shall be entitled to reimbursement of such amount, together with interest thereon from the date paid until the date reimbursed at the Default Rate.

(v) In connection with the quarterly and annual reconciliations to be effected as provided in (iv) above, any amounts in the Operating Account into which Revenues are deposited in excess of those reasonably needed or projected to be needed to pay Operating Expenses thereafter coming due (taking into consideration Revenues that will be added to such account thereafter) shall be distributed to the Parties in the same proportions as Operating Expenses are paid by the Parties.

(vi) It is the intention of the foregoing provisions that City shall ultimately receive and retain that portion of all Revenue that is equal to the City Fraction, that City shall ultimately pay that portion of all Operating Expenses equal to the City Fraction, and that Developer shall ultimately receive and retain the remaining Revenues and be liable for the remaining Operating Expenses.

(vii) Following each annual reconciliation, and subject to any audit adjustments, Developer shall distribute to City and Developer any amounts in the Operating Account over the then estimated three months projected Operating Expenses. This distribution will not occur until the budget for the next ensuing year has been approved in final form by the Parties.

f. Remedies. If either Party breaches its obligation to operate, maintain, repair and, when necessary, replace as set forth in this Declaration, the other Party may send written notice to such breaching Party and, if such obligations are not performed by the breaching Party within 15 days from receipt of such notice (if not reasonably capable of being fully performed within 15 days, such time frame shall be extended for such reasonable additional time as may be needed to perform so long as performance commences within such 15 day period and proceeds continuously, in good faith and with due diligence until completion), then the Party giving notice shall have the right (without limiting any other rights that may be available) to perform such obligations and bill the breaching Party for the reasonable costs of such performance. If the breaching Party shall not pay such bill within 15 days of receipt, then interest shall accrue on the unpaid amount from the time it was expended until paid at the Default Rate, and the non-breaching Party shall be entitled to Collection Costs for enforcement of the breaching Party's payment obligation. Notwithstanding the foregoing, in the event of an emergency, the notice and opportunity to cure provided above shall not be required but, rather, only such notice as may be reasonable under the circumstances shall be required (including telephonic notice or no notice at all); the Party relying upon the provisions of this sentence shall only perform such work as is reasonably necessary to stabilize the situation and eliminate the emergency situation, and all other or additional work shall require notice and opportunity to cure as provided above. The

provisions of this subparagraph shall specifically, without limitation, be applicable to the remedying of violations of Legal Requirements by the respective Parties as elsewhere provided in this Declaration.

5. Taxes.

a. Developer shall pay, with the maximum allowable discount, all taxes and assessments, real and personal, whether general or special, levied against the Retail Space, the Developer Spaces, the Developer Unit and their respective components. The Parties acknowledge that, due to the City's ownership of the City Spaces, the City Unit, the City Elevator and the equipment and signage for the Garage operation, they should be entitled to an exemption from real estate and personal property taxes and assessments (except, potentially, for the City Non-Supermarket Spaces). Developer agrees to cooperate with City, at no cost to Developer, in attempting to realize said exemption. To the extent an exemption from taxes is not available, City shall pay, with the maximum allowable discount, all taxes and assessments, real and personal, whether general or special, levied against the City Spaces and its components; provided, however, that if supermarket use in the Retail Space is changed to another use, Developer shall pay or reimburse the City for any taxes and assessments for the City Supermarket Spaces that the City would otherwise be obligated to pay if the City Non-Supermarket Spaces are at the time exempt (i.e. if the current exemption for the City Non-Supermarket Spaces is eliminated, the foregoing proviso shall be inapplicable). To the extent an exemption from taxes is not available in respect of the City Unit, the equipment and signage for the Garage operation or the City Elevator, the taxes and assessments related thereto, and its components, shall be included in Operating Expenses.

b. The foregoing shall not preclude either City or Developer from contesting taxes, so long as appropriate steps are taken to prevent a sale of the Property on account of non-payment thereof. The Party appealing taxes shall be responsible for the full costs for any such appeal.

c. With respect to assessments only, the foregoing shall not preclude payment in installments, to the extent available.

d. Each Party agrees to cooperate with all reasonable requests of the other in an attempt to have any portion of the Property reasonably requested by the other, or any component thereof, separately assessed for tax purposes.

e. If either Party breaches its payment obligations under this paragraph, the other Party shall have the right, but not the obligation, at any time thereafter, to remedy the breach by paying the

applicable amount to the applicable authority, and any such payment shall accrue interest at the Default Rate from the date paid until the date repaid, and the non-breaching Party shall be entitled to Collection Costs for enforcement of the breaching Party's payment obligation.

6. Insurance and Restoration.

a. Types of Insurance. Developer (and, in the case of (iv) below, City, unless City is entitled by law and elects to self insure this coverage, in which case the City shall be liable for all matters that would have been covered had City maintained such coverage as if it were maintaining such coverage) shall maintain at all times while this Declaration remains in effect, at its cost but subject to contribution as Operating Expenses (equitably allocated between the Retail Space and Garage as contemplated by Schedule 1 attached hereto or **Section 4(e)(iii)** hereto), the following:

(i) "special form" insurance on the Property (including in respect of the Garage equipment initially purchased and installed by City, and any replacements thereof) against all risks of physical loss or damage (including windstorm) in an amount not less than 100% of full replacement cost (excluding excavation, foundations and footings), with an agreed amount endorsement if coverage is by way of a blanket policy. Said policy shall include demolition and debris removal coverage;

(ii) commercial general liability insurance (including blanket contractual liability, personal injury and advertising injury, and, if applicable, liquor liability) covering the Property in amounts of at least $1,000,000 per occurrence in the aggregate, $1,000,000 products liability and completed operations aggregate and $10,000,000 excess umbrella coverage;

(iii) at all times during which construction is being performed in connection with the Property, builder's risk insurance with limits of coverage not less than that specified in subparagraph (i) above, independent contractor's insurance and blanket contractual liability insurance with limits of coverage not less than that specified in subparagraph (ii) above. In addition, owner's and contractor's protective insurance with a minimum coverage of $1,000,000 shall be required unless all contractors performing work in connection with such construction maintain no less than $1,000,000 of general liability insurance, naming the Parties and their mortgagees as additional insureds and satisfying the standards set forth elsewhere in this Declaration for insurance to be maintained by the Parties;

(iv) worker's compensation insurance at legally required levels and employer's liability insurance in an amount not less than $1,000,000 for the benefit of all employees entering upon the Property as a result of or in connection with their employment by the Party maintaining such coverage or any agent, representative, licensee or contractor of such Party (or where such Party is otherwise legally liable);

(v) insurance against loss or damage by boiler or compressor or internal explosion of a boiler or compressor if such items shall be located on the Property with limits of coverage not less than that specified in subparagraph (i) above;

(vi) rent loss/business interruption insurance for up to 18 months, if reasonably available, in respect of the Revenue generated from the Garage, as mutually and reasonably agreed upon by the Parties; and

(vii) such other insurance including, without limitation, flood, plate glass, malicious mischief and wrongful/discriminatory termination insurance, and in such amounts, and such increases to the foregoing coverages, as are customarily maintained with respect to facilities similar in construction, location and use to the facilities located on the Property.

b. Standards for Insurance. The policies provided for in subparagraph (a) may contain a reasonable deductible, not to exceed $50,000 for property perils (excluding windstorm), 2% of value for windstorm peril, $100,000 for flood and earthquake perils and $10,000 for general liability coverage, unless both Parties approve of higher or different deductibles in their reasonable discretion. The policies maintained shall name each Party and any mortgagees of such Party of which notice has been provided as additional named insureds (in the case of casualty and liability policies) and copies of the policies and certificates of insurance shall be provided to all named insureds promptly upon request. The insurance companies providing insurance shall have a Best's rating of not less than A(-)VII (or its equivalent) at the time each policy is acquired or renewed. Each policy of casualty and liability insurance shall contain a waiver of subrogation rights against the other Party, its mortgagee(s) and tenant(s), and their respective agents, employees and representatives; and each Party, for itself and for its mortgagee(s) and tenant(s) and their respective agents, employees and representatives, waives any liability that the other Party or its mortgagee(s) or tenant(s) or their respective agents, employees or representatives might have which was covered or would have been covered by the insurance provided for in this subparagraph. The amount of any deductible shall be deemed an Operating Expense (and shall be allocated between the Parties in the

same manner as insurance proceeds, of which the deductible is a substitute). All insurance may be maintained through a blanket policy or policies, and shall be reasonably allocated amongst the properties covered and between the Garage and the Retail Space.

c. Remedies. In the event either Party fails to maintain the insurance required hereunder, the other Party may, but shall not be obligated to, obtain such insurance coverage for the breaching Party and the breaching Party shall, within 15 days of demand therefor, reimburse the other for the reasonable cost thereof. If the breaching Party fails to do so, interest shall accrue on the amount owed at the Default Rate from the date paid until the date reimbursed, and the Non-breaching Party shall be entitled to Collection Costs for enforcement of the breaching Party's payment obligation.

d. Casualty. In the event any portion of the Property, or any components thereof, is damaged or destroyed by reason of casualty, Developer shall promptly, in good faith and with due diligence, settle the loss (including pursuing funding of the insurance proceeds) and thereafter promptly restore the damaged or destroyed portion to at least the following extent: (i) the Property shall be restored to substantially the condition it was in prior to the damage or destruction (provided, that if restoration to substantially the condition they were in prior to the damage or destruction is not then permitted by applicable Legal Requirements, restoration shall be to as nearly the condition they were in prior to the damage or destruction as may then be permitted by applicable Legal Requirements) or (ii) the damage or destruction can be restored to such different condition (subject to the provisions of this Declaration, however, respecting relocation of easements and other matters, the City Spaces shall be restored in accordance with (i) above) and no change in the character of the Property as a retail/restaurant/office project shall be effected without the City's approval, which will not be unreasonably withheld, delayed or conditioned) as the Developer may determine in its sole discretion; and, further. The insurance proceeds payable on account of damage or destruction to the Property shall first be applied toward the restoration obligations set forth herein, and the balance shall be disbursed to and retained by Developer as its sole property. In the event Developer breaches its restoration obligations under this subparagraph or under **paragraph 7** regarding restoration after condemnation, the City, after 30 days prior written notice, shall be entitled to perform such restoration at the Developer's reasonable cost, and the Developer shall reimburse the amounts so incurred, together with interest thereon from the date paid until the date reimbursed at the Default Rate, promptly upon demand, and City shall be entitled to Collection Costs for enforcement of the Developer's payment obligation.

7. Condemnation.

a. In the event all or any portion of the Property, or any component thereof, is condemned or taken through eminent domain, by deed in lieu thereof or by any other means, Developer shall be entitled to exercise total and sole control over the condemnation proceedings (including, without limitation, defenses against the taking, if any, withdrawal and disbursement (consistent with the last sentence of this subparagraph (a)) of all proceeds of the taking, and the extent (subject to the express provisions of this Declaration) of restoration, if any). City shall promptly notify Developer of any condemnation proceeding instituted against any interest of City in the Property, or of any written notice received by the City in respect of a potential condemnation of any such interest, and authorizes Developer to intervene and assume the defense of any such proceeding and the negotiations pertaining to any such notice of potential condemnation on behalf of the City (and to the exclusion of the City), consistent with the provisions of this **Section** 7. City further authorizes the consolidation of any separate condemnation proceedings in respect of the City's interests and the Developer's interests in the Property. The City shall not be entitled to contest the taking or raise defenses or take any other actions in respect of the condemnation without Developer's consent in its absolute and sole discretion. City shall fully cooperate with and join in any stipulations or other documents reasonably requested by Developer in furtherance of the foregoing. Except as specified in the last sentence of this subparagraph (a), (i) the City hereby assigns all right, title and interest of the City in respect of any actual or potential condemnation proceedings affecting any interest of the City in the Property to Developer, (ii) the City shall not be entitled to share in any portion of the award, or to receive a separate award, (iii) City hereby waives any and all rights that it might otherwise have to share in such award and (iv) City hereby waives any and all rights that it might otherwise have to obtain a separate award. The City shall be entitled to consult with Developer in respect of any matters pertaining to any condemnation and to sit in on meetings pertaining to any condemnation, but the decisions made by Developer in its sole discretion shall be binding on City so long as they are consistent with the provisions of this Declaration. The Parties have agreed that, in the event of a taking, City's portion of the award shall be the amount specified in subparagraph (b) below and the condemning authority is authorized and directed to allocate said amount to City and pay such amount directly to the City out of the final condemnation award proceeds.

b. If any parking spaces are taken, or any portion of the Garage is taken such that parking spaces must be reconfigured in Developer's sole but reasonably exercised business judgment in order for them to be useable and, as a result of such reconfiguration, there is a loss of parking spaces, the number of parking spaces so taken or

lost as a result of reconfiguration shall first be applied to reduce the number of City Spaces (and if Retail Spaces are taken or lost, City shall re-convey to Developer (or its designee) the number of City Spaces required to implement the foregoing allocation (and if all City Spaces are lost or re-conveyed (or the number of City Spaces remaining after the taking and any reconfiguration is less than 100), City shall also convey any remaining City Spaces and the City Unit, City Elevator and all equipment and signage utilized in connection with the operation of the Garage to Developer (or its designee), regardless of the amount paid for, or who paid for or installed, same, and the City's rights in respect of this Declaration shall terminate and vest in Developer (or its designee) upon payment to the City of the payment provided for herein), which re-conveyance (and equipment and signage conveyance, if applicable) shall be free and clear of all liens and encumbrances other than those existing when Developer originally conveyed the spaces to the City (or when City acquired the equipment or signage) and any matters created by, joined in, rendered against or requested by Developer). As City's sole award for the lost/re-conveyed spaces and/or the City Elevator, City shall be entitled to payment of an amount equal to (i) in the case of loss/re-conveyance of the City Elevator, an amount equal to the City's Transit Facility Contribution attributable to the City Elevator without interest or (ii) in the case of lost/re-conveyed spaces, an amount per City Space lost (including by way of re-conveyance to Developer (or its designee) or otherwise) as a result of the taking or reconfiguration as provided herein equal to the greater of (A) the Fair Market Value (determined in accordance with the provisions of this Declaration and not pursuant to the mechanism customarily used in condemnation proceedings) of each City Space at the time of loss/re-conveyance multiplied by the Fraction or (B) the City's Transit Facility Contribution attributable to the City Spaces divided by 535 and multiplied by the number of City Spaces lost/reconveyed, without interest. In addition, upon a loss/conveyance/re-conveyance of all City Space, twice (once for Developer's unamortized costs and once for City's unamortized cost) any remaining unamortized cost over the first 10 years that Developer has not paid, as contemplated above, on all equipment and signage utilized in connection with the operation of the Garage shall be paid to the City. Developer shall be liable for payment of any transfer taxes (documentary stamps, surtax or otherwise) that may be payable on any such conveyance/re-conveyance, if any are payable. The Parties acknowledge that the foregoing payment is not and will not be reflective of fair market value or the amount that the condemning authority would be obligated to pay for the City Elevator or spaces so lost/re-conveyed, but is merely intended as an agreed upon payment and allocation between the Parties which takes into consideration various compromises between the Parties in respect of the negotiations that led up to the entering into of this Agreement and the transaction evidenced hereby. There shall be no payment due to City for the City Unit or, except as specifically provided above, the equipment and signage to be

conveyed by the City, if applicable. From and after the date of such taking (or possession to the conveying authority, if later), the percentages utilized for purposes of calculating the relative contributions of the City and Developer in respect of Operating Expenses and Revenues shall be adjusted proportionately, effective as of the date of the taking or possession, as applicable. In the event of a taking, the provisions of **subparagraph 6(d)** of this Declaration shall apply as between City and Developer and the portion of the Property that is not taken shall be restored as required therein and the condemnation proceeds available as a result of the condemnation shall be used for restoration as and to the extent set forth therein for insurance proceeds.

c. Intentionally omitted.

d. Upon any condemnation that does not result in a termination of the City's rights under this Declaration, Developer shall utilize so much of the condemnation award proceeds as may be received and needed for restoration to restore the Garage to the condition called for by **Section 6(d)** in the case of casualty.

8. "5th & Alton" Trade Name. City (only in its capacity as a Party to this Declaration) acknowledges being advised of Developer's proprietary interest in the trade name "5th & Alton" and will not dispute same. City may use the name "5th & Alton as a locational reference for the Garage, but shall not otherwise use such name. City further agrees to comply, at no out of pocket cost to City, with any requirements that Developer may reasonably impose from time to time in order to protect its rights with respect to the "5th & Alton" trade name.

9. Developer's Right of First Refusal to Purchase. If City desires to sell all of it interests in the Property and enters into a contract (which contains no contingencies (or in respect of which all contingencies have expired) other than a contingency for exercise by Developer of its right of first refusal) to do so (Seller may not sell partial interests in the Property), Seller shall first offer its interests in the Property to Developer (and said contract shall be contingent on Developer not exercising its right of first refusal), who may acquire same at the greater of (a) the full amount of the City's Transit Facility Contribution, less the portion thereof allocated to the Transit Facility Dedication Area and the Transit Facility Dedication Area Finishes, and adjusted to exclude payment for the City Elevator or any City Spaces previously conveyed/reconveyed to Developer or lost through condemnation, without interest or (b) Fair Market Value for each City Space multiplied by the Fraction plus the City's Transit Facility Contribution attributable to the City Elevator. There shall be no payment due to City for the City Unit or, except as

specifically provided in **Subparagraph 7(b)** above, the equipment and signage to be conveyed by the City. Developer shall have 30 days from the date City offers its interest in the Property to Developer within which to elect to accept such offer, which election shall be evidenced by a written acceptance to the City. Once accepted, Developer shall close on the purchase of City's interests in the Property by no later than the later of the date provided for in the contract obtained by the City from a third party (which triggered the rights of Developer under this paragraph) or 60 days after acceptance by Developer, which time frame may be extended by Developer for a reasonable additional period not to exceed an additional 60 days in order to obtain funding for the acquisition. Conveyance shall be free and clear of all liens and encumbrances other than those existing when Developer originally conveyed the City Spaces to the City (or when City acquired the equipment or signage to be conveyed) and any matters created by, joined in, rendered against or requested by Developer). Income and expenses shall be prorated as of the closing date. City may not sell parts of its interests in the Property. This paragraph shall not apply to any conveyance by the City to a successor governmental authority, but shall be binding on such successor. This provision is agreed to in recognition of the unique aspects of the public/private venture that the Parties contemplate, and the fact that Developer would not have entered into a transaction of this type with another private party. Accordingly, City shall not have the right to object to provisions of this paragraph on the grounds that the price to be paid is less than what it would otherwise have received from a third party.

10. Miscellaneous.

a. Specific Performance. Anything to the contrary contained in this Declaration notwithstanding, in the event of a violation or breach of any of the provisions contained in paragraphs 2,3(a)-(d), 5(a)(1) and (d), 7, 8 and 9 of this Declaration, specific performance and/or injunctive relief shall specifically be available, it being agreed that damages would, at best, be difficult to ascertain and would be an inadequate remedy in any event. The foregoing shall not, however, preclude specific performance and/or injunctive relief in the event of a violation or breach of any other provisions of this Declaration, or constitute an acknowledgment that damages in the event of a violation or breach of any other provisions of this Declaration would be readily ascertainable or an adequate remedy.

b. Prevailing Party Attorneys' Fees; WAIVER OF JURY TRIAL. The prevailing Party in any action in connection with this Declaration (whether in tort, contract or otherwise) shall be entitled to the award of court costs and a reasonable attorneys' and paralegals' fees at all tribunal levels and in connection with all proceedings, whether or not suit is instituted. The Parties, each being represented

by counsel, knowingly, intentionally and voluntarily WAIVE TRIAL BY JURY (for themselves, their successors and assigns) in all actions or proceedings pertaining to the subject matter of this Declaration.

c. Estoppel Certificates. Each owner from time to time of the Property, or any portion thereof, agrees, promptly upon request, to furnish from time to time to any other such owner in writing such truthful estoppel information and/or one or more confirmatory easements (confirmatory of the general easements granted hereby) as may be reasonably requested.

d. No Public Dedication. Nothing contained herein shall be construed as a dedication of the easements granted herein to the general public.

e. Covenant Running with Land; Modifications. This Declaration shall be a covenant running with the land and shall be binding upon and inure to the benefit of the owners from time to time of every portion of the Property, their successors, assigns, employees, agents, customers, tenants, guests, licenses, invitees and mortgagees. Notwithstanding the foregoing, this Declaration may be abrogated, modified, terminated, rescinded or amended in whole or in part by an instrument executed by the then owners of the Property, joined by their respective mortgagees (if any). The joinder of any tenants, guests, licensees or invitees of any such owner (or anyone else) shall specifically not be required in connection with any of the foregoing.

f. Notices. Any notices required to be given hereunder shall be given by certified mail, return receipt requested, by hand delivery, by facsimile machine or by FedEx or similar overnight courier service, postage prepaid, to the address specified in the introductory paragraph of this Declaration. Except as and to the extent expressly provided for below with respect to notices of change of address, notices that are given in the manner aforestated shall be effective (regardless of whether or not they are actually received) upon mailing or depositing with FedEx or similar overnight courier service, if mailed or deposited with FedEx or similar overnight courier service, upon receipt of a transmission confirmation if sent by facsimile machine or upon receipt if hand delivered. Any Party hereto may change its address for notice by notifying the other Parties hereto in the manner provided for above; provided, however, that notices of change of address shall not be effective unless and until they are actually received, delivery is refused or they are returned because the address to which they were sent is no longer a current address and the Party sending such notice was not properly furnished a notification of change of address. Copies of any notices required to be given to another Party shall also be given to the holder of any mortgage encumbering the portion of the Property owned by such Party if the holder of any such

mortgage has notified (in the manner provided for above for giving notice of change of address) the Party giving notice of such holder's address and requested that notices be furnished to such holder. Notice given by the attorney for any Party shall be as effective as if given by that Party.

g. Governing Law; Invalidity; Liability After Sale; Counterparts. This Declaration shall be governed by the laws of the State of Florida. If any portion of this Declaration shall be or become illegal or unenforceable for any reason, the remaining portions shall remain in full force and effect and shall be enforceable to the fullest extent permitted by law. Upon sale of any portion of the Property, the transferor thereof shall be relieved of personal liability hereunder related to the time period subsequent to such transfer with respect to the portion so transferred. This instrument may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document.

h. Certain Defined Terms; Construction.

(i) Whenever used in this Declaration, the term "Default Rate" shall mean a rate per annum equal to two percent (2%) above the prime rate from time to time published in the Wall Street Journal or its successor, or if it has no successor, a newspaper or other publication of similar stature. Whenever used in this Declaration, the term "Collection Costs" shall include all costs and expenses reasonably incurred in enforcing the applicable obligation(s) under this Declaration, including, without limitation, reasonable attorneys' and paralegals' fees at all tribunal levels, in connection with all proceedings, and whether or not suit is instituted.

(ii) Whenever used in this Declaration, the term "Initial Construction" shall mean construction of the retail/office and garage improvements initially contemplated to be constructed on the Property in accordance with the Development Agreement.

(iii) Whenever the terms "presently" or "existing" are used herein, they shall refer to the date of recording of this Declaration.

(iv) Use of the words "herein," "hereinafter," "hereinabove," "hereof" and "hereunder," in this Declaration refer to this Declaration as a whole and not merely to the particular article, section, paragraph or provision in which such words appear, unless the context otherwise requires. Whenever it is indicated in this Declaration that either Party may, shall or will perform any act, then such act shall be performed at the sole cost and expense of the performing Party unless otherwise specifically indicated to the

contrary. Use of the word "including" shall be deemed illustrative and not exclusive, and shall be deemed qualified by the term "but not limited to" whenever used.

i. Captions. The captions appearing in this Declaration are for convenience and reference only and in no way define, limit or describe the scope or intent of this Declaration, nor in any way affect this Declaration.

j. No Partnership. Nothing in the Declaration shall cause the Parties in any way to be construed as a partners, joint venturers or associates of each other in the operation of the Property or subject either Party to any obligations, loss, charge or expenses connected with or arising from the operation or use of the Property by the other.

k. Time of Essence. Time is of the essence of this Declaration as to each of the terms, conditions, obligations and performances contained herein or required hereunder.

l. Waiver. No failure by either Party to insist upon the strict performance of any covenant, agreement, term or condition of this Declaration or to exercise any right or remedy consequent upon a breach or default thereof, no forbearance by either Party to enforce one or more of the remedies herein provided upon an event of default, and no acceptance of full or partial payment of any amount payable under this Declaration during the continuance of any such breach or default, shall constitute a waiver of any such breach or default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Declaration to be performed or complied with by either Party and no breach or default thereof shall be waived, altered or modified except by a written instrument executed by the other. No waiver of any breach or default shall affect or alter this Declaration, but each and every covenant, agreement, term and condition of this Declaration shall continue in full force and effect with respect to any other then existing or subsequent breach or default thereof.

m. Entire Agreement. This Declaration and the surviving terms of the Development Agreement in furtherance of which this Declaration is executed (the "Development Agreement") contains the entire agreement between the Parties with respect to the subject matter hereof and all negotiations between the Parties are merged herein. Without limiting the foregoing, but in furtherance thereof, the Parties acknowledge that there are no promises, inducements, assurances, agreements, guarantees, warranties, representations or solicitations, either express or implied, written or oral, except as and to the extent specifically recited and contained herein or in the Development

Agreement. This Declaration cannot be changed, modified or terminated orally, but only by an instrument in writing executed by the Party against whom enforcement of any waiver, change, modification or discharge is sought.

n. Remedies Cumulative. Each right and remedy provided for in this Declaration shall be cumulative and shall be in addition to every other right or remedy provided for in this Declaration or now or hereafter existing by law. The exercise or beginning of the exercise of any one or more rights or remedies shall not preclude the simultaneous or later exercise of any or all other rights or remedies, nor shall it constitute a forfeiture or waiver of any amounts owed.

o. Independent Covenants. Each and every covenant and agreement contained in this Declaration shall be deemed separate and independent and not dependent upon any other provisions of this Declaration and the damages for failure to perform the same shall be deemed in addition to and separate and independent of the damages accruing by reason of the breach of any other covenant contained in this Declaration.

p. Force Majeure. If either Party is unable to fulfill, or is delayed in fulfilling, any of its obligations under this Declaration by reason of strike or other labor trouble; governmental pre-emption or priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom; acts of God; accident; severe adverse weather conditions; permitting or governmental inspection delays; equipment or machinery malfunction or breakdown; or any other cause beyond its reasonable control, the period of such delay or such prevention shall be deemed added to the time herein. However, the foregoing shall not delay the time period for paying any sums due under this Declaration.

q. Construction. This Declaration shall not be construed more strictly against one Party than against the other by virtue of the fact that initial drafts may have been prepared by counsel for one of the Parties, it being recognized that this Declaration is the product of extensive negotiations between the Parties and that both Parties have contributed substantially and materially to the final preparation of this Declaration.

r. No Third Party Beneficiaries. The provisions contained in this Declaration are for the sole benefit of the Parties, and their respective successors and assigns, and shall not give rise to any rights by or on behalf of anyone other than such parties.

Sample Garage Budget
5th and Alton Municipal Garage

Assume Operating Budget based on $ 55.00 per space/month

1081 $713,460.00

Assumptions

CMB Parking	535	49.49%
PotBerk Parking	546	50.51%
Total Parking	1,081	
Garage Square Footage	479,590	72%
Retail Square Footage	180,000	27%
Common Area Square Footage	10,999	2% 2.29%
Project Square Footage	670,589	100%

Categories

City of Miami Beach	Proj. Project Expense	Retail Allocation	Garage Allocation	Retail Allocation	Garage Allocation	CMB 49%	BDG 51%	Notes
Payroll	$ 214,362	0.00%	100.00%	$ -	$ 214,362			Based on Weekly Schedule of 495 Hours
Payroll Taxes	$ 23,595	0.00%	100.00%	$ -	$ 23,595			Payroll figured @ 10.26%
Workers Comp	$ 14,500	0.00%	100.00%	$ -	$ 14,500			$6.96 per $100 of Payroll
Health Welfare	$ 3,183	0.00%	100.00%	$ -	$ 3,183			Med. Coverage @ 75% of premium 12 months
Uniforms	$ 3,432	0.00%	100.00%	$ -	$ 3,432			Weekly rental $6.00 p/week X 52 weeks
Tickets	$ 2,880	0.00%	100.00%	$ -	$ 2,880			200m @ $14.40/m
Berkowitz								
Telephone (Garage Lines Only)	$ 3,000	0.00%	100.00%	$ -	$ 3,000			
Utilities	$ 10,000	35.00%	65.00%	$ 3,500	$ 6,500			
Repair & Maintenance					$ -			
Maintenance Salaries	$ 32,000	32.00%	68.00%	$ 10,240	$ 21,760			
Janitorial Expense	$ 60,000	10.00%	90.00%	$ 6,000	$ 54,000			
Parking Lot Sweeping	$ 21,500	0.00%	100.00%	$ -	$ 21,500			
Parking Lot Lighting	$ 6,800	10.00%	90.00%	$ 680	$ 6,120			
Parking Lot Restripping/Resurfacing	$ 500	0.00%	100.00%	$ -	$ 500			
Electrical Repairs	$ 4,000	10.00%	90.00%	$ 400	$ 3,600			
Maintenance Cleaning Supplies	$ 4,000	10.00%	90.00%	$ 400	$ 3,600			
Ramp Repairs	$ 1,000	0.00%	100.00%	$ -	$ 1,000			
Bumper Repair/Replacement	$ 1,000	0.00%	100.00%	$ -	$ 1,000			
Ramps Access Control	$ 2,500	0.00%	100.00%	$ -	$ 2,500			
Garage Ventilation	$ -	0.00%	100.00%	$ -	$ -			
Garage Signage	$ 500	0.00%	100.00%	$ -	$ 500			
Plumbing Repairs	$ 750	10.00%	90.00%	$ 75	$ 675			
Roof Deck	$ -	0.00%	100.00%	$ -	$ -			
Garage Light Bulbs	$ 250	10.00%	90.00%	$ 25	$ 225			
Barrier Cables	$ -	0.00%	100.00%	$ -	$ -			
HVAC - Security Office	$ -	40.00%	60.00%	$ -	$ -			
HVAC - Parking Attendant Booths	$ -	0.00%	100.00%	$ -	$ -			
Misc. Maintenance Equipment	$ 10,000	32.00%	68.00%	$ 3,200	$ 6,800			
Service Contracts					$ -			
Fire Extinguisher	$ 1,500	10.00%	90.00%	$ 150	$ 1,350			
Fire Alarm Monitoring	$ 1,800	10.00%	90.00%	$ 180	$ 1,620			
Emergency Generator	$ 3,500	10.00%	90.00%	$ 350	$ 3,150			
Pressure Cleaning	$ 6,000	10.00%	90.00%	$ 600	$ 5,400			
Equipment Rental and Repairs	$ 8,882	10.00%	90.00%	$ 888	$ 7,994			
Security Cameras	$ 3,000	0.00%	100.00%	$ -	$ 3,000			
Misc. Common Area Expenses	$ 2,000	32.00%	68.00%	$ 640	$ 1,360			
License	$ 400	32.00%	68.00%	$ 128	$ 272			Occupational License, Dade County fees
Professional Services	$ -	100.00%	0.00%	$ -	$ -			Payroll Processing @ $6/employee/payperiod, drug screening, accounting
Signage	$ 1,000	32.00%	68.00%	$ 320	$ 680			auditing, supervisory support capped at $11,570 per year
Courier Service	$ 6,716	0.00%	100.00%	$ -	$ 6,716			Daily Revenue pick-up Loomis Fargo, supplies
Interior / Atrium Railings	$ -	32.00%	68.00%	$ -	$ -			
Decorative Grating	$ -	0.00%	100.00%	$ -	$ -			
Pest Control	$ 500	10.00%	90.00%	$ 50	$ 450			
Storm Water	$ 1,000	32.00%	68.00%	$ 320	$ 680			
Sanitation	$ -	100.00%	0.00%	$ -	$ -			Retail Plumbing
Water and Sewer	$ 4,000	32.00%	68.00%	$ 1,280	$ 2,720			
Security	$ 275,000	40.00%	60.00%	$ 110,000	$ 165,000			City Budget (Elite Guard @ 280 nhrs/week @ $8.65 hr)
Landscaping & Tree Trimming	$ 15,000	50.00%	50.00%	$ 7,500	$ 7,500			
Irrigation / Sprinklers	$ 2,500	50.00%	50.00%	$ 1,250	$ 1,250			
Elevator Maintenance	$ 65,000	32.00%	68.00%	$ 20,800	$ 44,200			
Fire Safety Equipment	$ 3,682	10.00%	90.00%	$ 368	$ 3,314			
Trash and Waste removal	$ 5,000	32.00%	68.00%	$ 1,600	$ 3,400			Weekly garbage pickup
Fire Alarm and Sprinklers	$ 9,000	10.00%	90.00%	$ 900	$ 8,100			
Garage Keepers Insurance	$ 5,000	0.00%	100.00%	$ -	$ 5,000			
Liability Insurance (NOTE)	$ 40,000	2.00%	98.00%	$ 800	$ 39,200			1,070 Spaces @ $13.75 per space
Casualty Insurance (NOTE)	$ 102,600	0.00%	100.00%	$ -	$ 102,600			
Loss of Rent (NOTE)	$ 5,333	0.00%	100.00%	$ -	$ 5,333			
Painting	$ 8,000	10.00%	90.00%	$ 800	$ 7,200			
Property Mgmt & Office Reimbusement	$ 50,000	50.00%	50.00%	$ 25,000	$ 25,000			
Marketing	$ 7,500	0.00%	100.00%	$ -	$ 7,500			
	$ 1,053,665			$ 198,444	$ 855,221			
			Yrly Retail Tenant Contribution		$ 290,000			
			Net Garage Expense		$ 565,221	$282,610	$282,610	

Retail	$ 1.121
Garage	$ 1.639
	$ 2.76

NOTE: Liability insurance coverage with be based on the prorata of Garage SF vs. Common Area SF
Currently 479,590 sf vs. 10,999 sf, respectively 98% vs 2%

Casualty insurance coverage with be based on the actual/projected cost to rebuild parking garage
This expense is expected to fluctuate yearly, based on past experience with insurance

Loss of Rent insurance will be based on estimated annual garage revenues. Estimated for 1 million dollars at $5,333 per year, which equals .54 cents per $100 in revenue.

EXHIBIT F

PERMITTED EXCEPTIONS FOR CITY SPACES

1. Taxes and assessments for the year of conveyance and subsequent years.

2. Covenants, conditions and restrictions as set forth in the Special Warranty Deed recorded in Official Records Book 12745, Page 3829, of the Public Records of Miami-Dade County, Florida.

3. The effects of Orders recorded in Official Records Book 16293, Page 506, and in Official Records Book 22847, Page 3528, both of the Public Records of Miami-Dade County, Florida. Any Florida form 9 title insurance coverage shall be inapplicable to this item.

4. Reservations for oil, gas, mineral, metal, phosphate and petroleum contained in Deed recorded in Deed Book 162, Page 398, of the Public Records of Miami-Dade County, Florida. Note: the right of entry and exploration has been released pursuant to FS Section 270.11.

EXHIBIT G

FORM DEED FOR CITY SPACES AND TRANSIT ELEMENTS

Prepared by and return to:
Arnold A. Brown, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
2500 Wachovia Financial Center
Miami, Florida 33131

Part of Folio Nos.:

_____

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made as of the __ day of _____, A.D., 200_, by AR&J Sobe, LLC, a Florida limited liability company, party of the first part, whose post office address is c/o Berkowitz Development, 2665 South Bayshore Drive, Suite 1200, Coconut Grove, Florida 33133, hereinafter called the Grantor, to The City of Miami Beach, a Florida municipal corporation, party of the second part, whose post office address is 1700 Convention Center Drive, Miami Beach, Florida 33139, Attn: City Manager, and whose Federal Identification No. is _____, hereinafter called the Grantee (wherever used herein the term "Grantor" and "Grantee" include all the parties to the instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations):

WITNESSETH: That Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain land situate in Miami-Dade County, Florida, viz:

> Units ___ and ___, of 5th and Alton, a condominium, according to the Declaration of Condominium thereof, recorded in Official Records Book _____, Page ____, of the Public Records of Miami-Dade County, Florida.

Subject to:

1. Taxes and assessments for the year 200_ and subsequent years.
2. Zoning and other governmental rules, regulations and ordinances.

3. Easements and restrictions of record, if any, without intent to reimpose or reinstate same hereby.

4. Facts which a current and accurate survey or visual inspection of the property might disclose.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND Grantor hereby covenants with Grantee that Grantor is lawfully seized of said property in fee simple and has good right and lawful authority to sell and convey said property; and hereby warrants the title to said property and will defend the same against the lawful claims of all persons claiming by, through or under said Grantor.

Acceptance and recording of this Deed constitutes a release of the Memorandum of Development Agreement recorded in Official Records Book _____, Page ____, of the Public Records of Miami-Dade County, Florida, between Grantor and Grantee and Grantee joins herein to acknowledge that said Memorandum of Development Agreement shall have no further force or effect.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Sign Name:_____
Print Name:_____

Sign Name:_____
Print Name:_____

AR&J Sobe, LLC, a
Florida limited liability
company

By:_____
Jeffrey L. Berkowitz, Manager

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 200_, by Jeffrey L. Berkowitz, as Manager of AR&J Sobe, LLC, a Florida limited liability company, in the capacity

aforestated; such person is personally known to me or has produced a driver's license as identification.

Sign Name:_____
Print Name:_____
Notary Public
Serial No. (none if blank): _____
[NOTARIAL SEAL]

My Commission Expires:

WITNESSES:

CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida

_____
Print Name_____

By:_____
David Dermer, Mayor

_____
Print Name_____

ATTEST:

_____
Print Name_____

By:_____
Robert Parcher, City Clerk

_____
Print Name_____

[SEAL]

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by David Dermer, as Mayor, and Robert Parcher, as City Clerk, of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

_____
Notary Public

_____
Type, Print or Stamp Name
My Commission Expires:

EXHIBIT H

Intentionally Omitted

EXHIBIT I

LOCATION OF CITY SPACES, TRANSIT ELEMENTS AND DEVELOPER SPACES

To be reasonably and in good faith agreed upon between the Developer and City, acting through its City Manager, prior to Developer's Construction Application Notice, and memorialized in writing promptly upon the request of either party

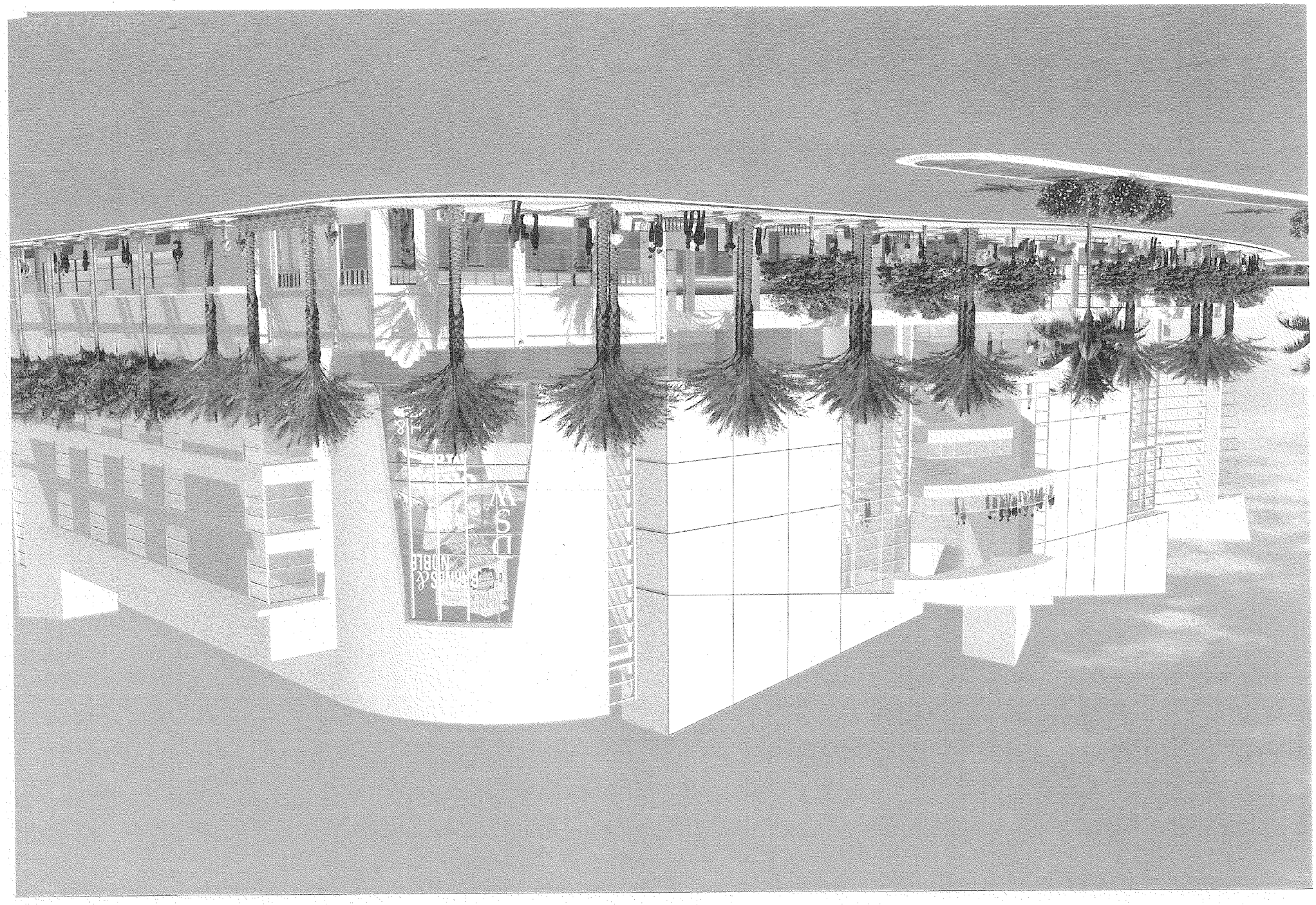
EXHIBIT J

PROJECT CONCEPT PLAN


MIAMI
BEACH
5th
ALTON
BARNES & NOBLE
DSW
Office Max
BED BATH & BEYOND
DIVA COSMETICS
DIVA COSMETICS
DIVA COSMETICS
2004/10/13

Exhibit "J" (1)

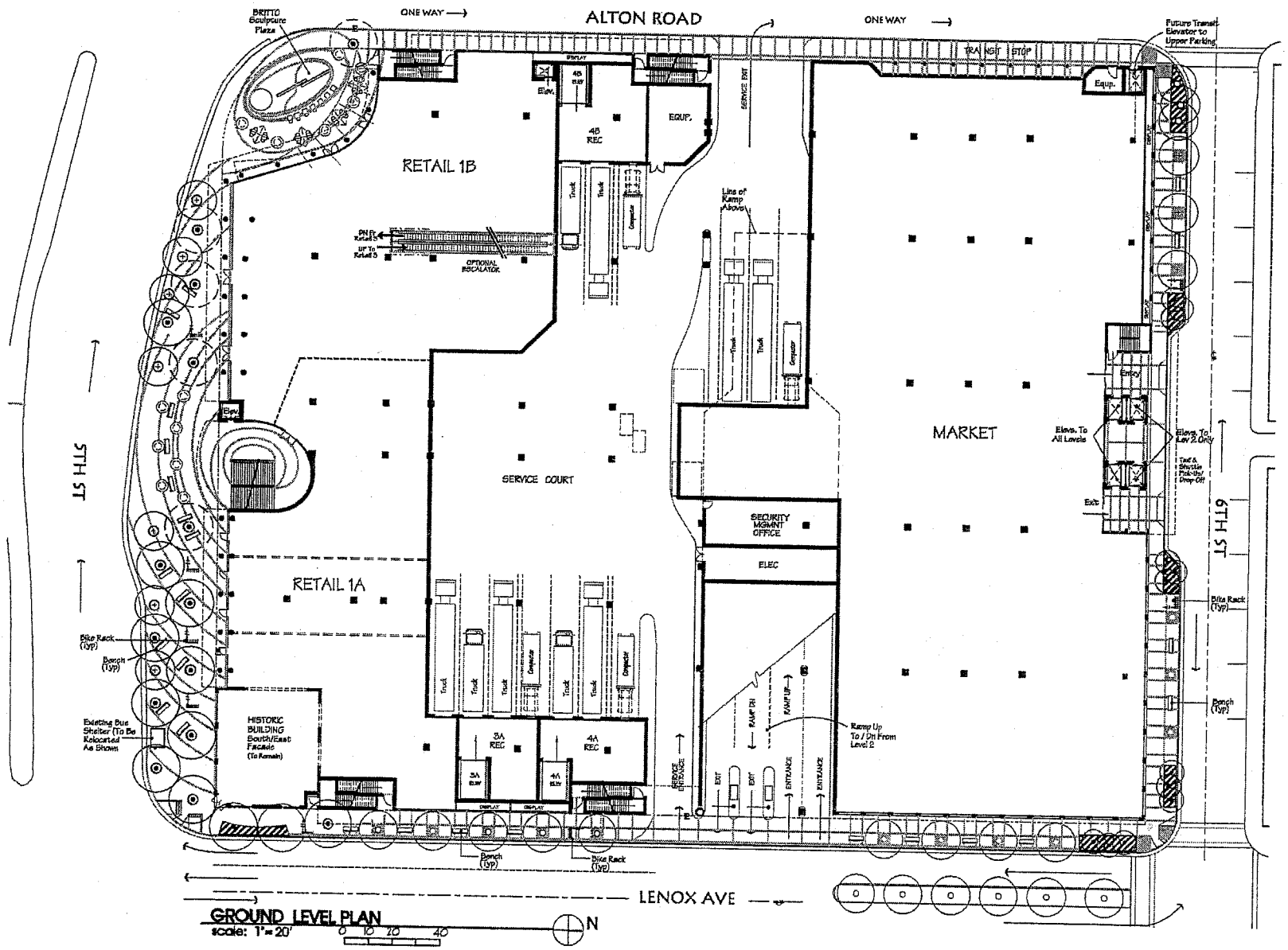
(2)



6TH & ALTON SIGNAGE

2004/10/22

(3)



FIFTH & ALTON SOUTH BEACH

robin bosco architects & planners, inc.
2937 southwest 27th avenue/suite 207
miami, florida 33133/305-442-2545
fla reg: AA 0001766

STA ARCHITECTURAL GROUP
3626 NORTH MIAMI AVE, MIAMI, FL 33127
305.571.1811 FAX 305.571.1821

GROUND LEVEL PLAN

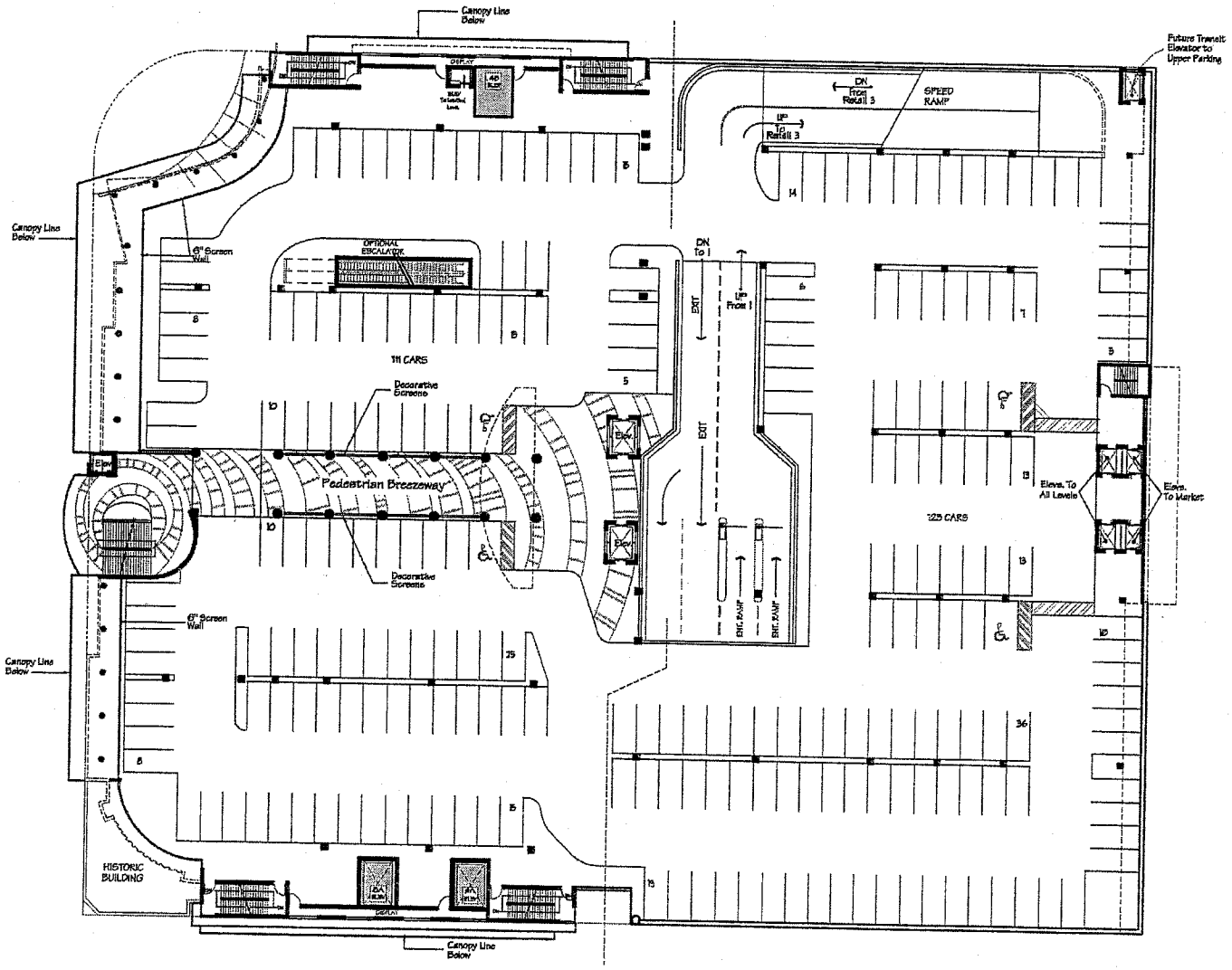
date: August 17, 2004

sheet:

A-1

2004/08/16

(4)



2 PARKING LEVEL PLAN
scale: 1"= 20' 0 10 20 40 N

(5)

robin bosco architects & planners, inc.
2937 southwest 27th avenue/suite 207
miami, florida 33133/305-442-2345
lic reg: AA 0001766

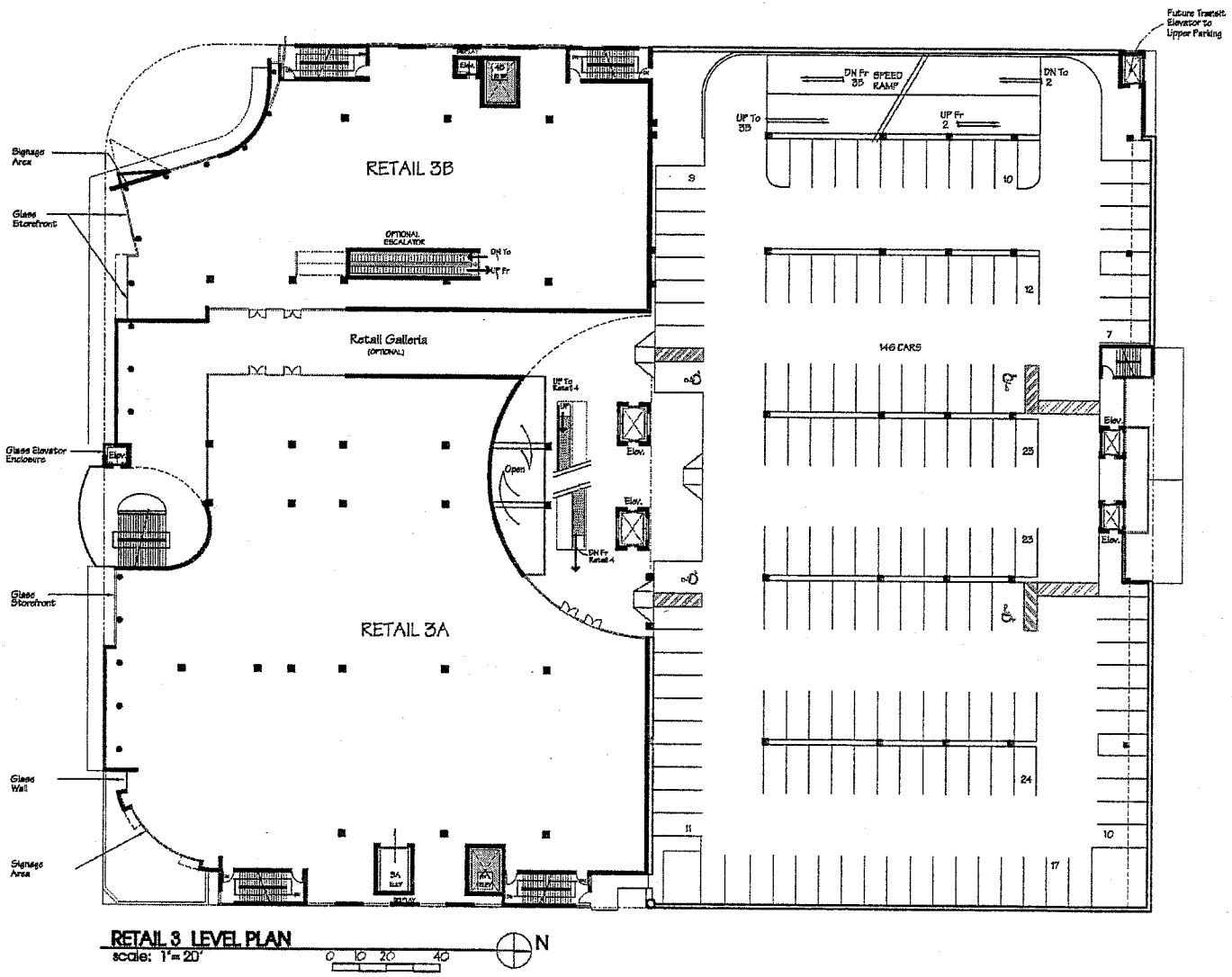
STA ARCHITECTURAL GROUP
3026 NORTH MIAMI AVE. MIAMI, FL 33127
305.571.1611 FAX 305.571.1621

2-PARKING LEVEL PLAN

date: August 17, 2004

sheet: A-2

2004/08/16



RETAIL 3 LEVEL PLAN
scale: 1" = 20'
0 10 20 40 N

robin bosco architects & planners, inc.
2937 southwest 27th avenue/suite 207
miami, florida 33133/305-443-2545
fla reg: AA 0001768

STA ARCHITECTURAL GROUP
2828 NORTH MIAMI AVE. MIAMI, FL 33127
305.571.1811 FAX 305.571.1821

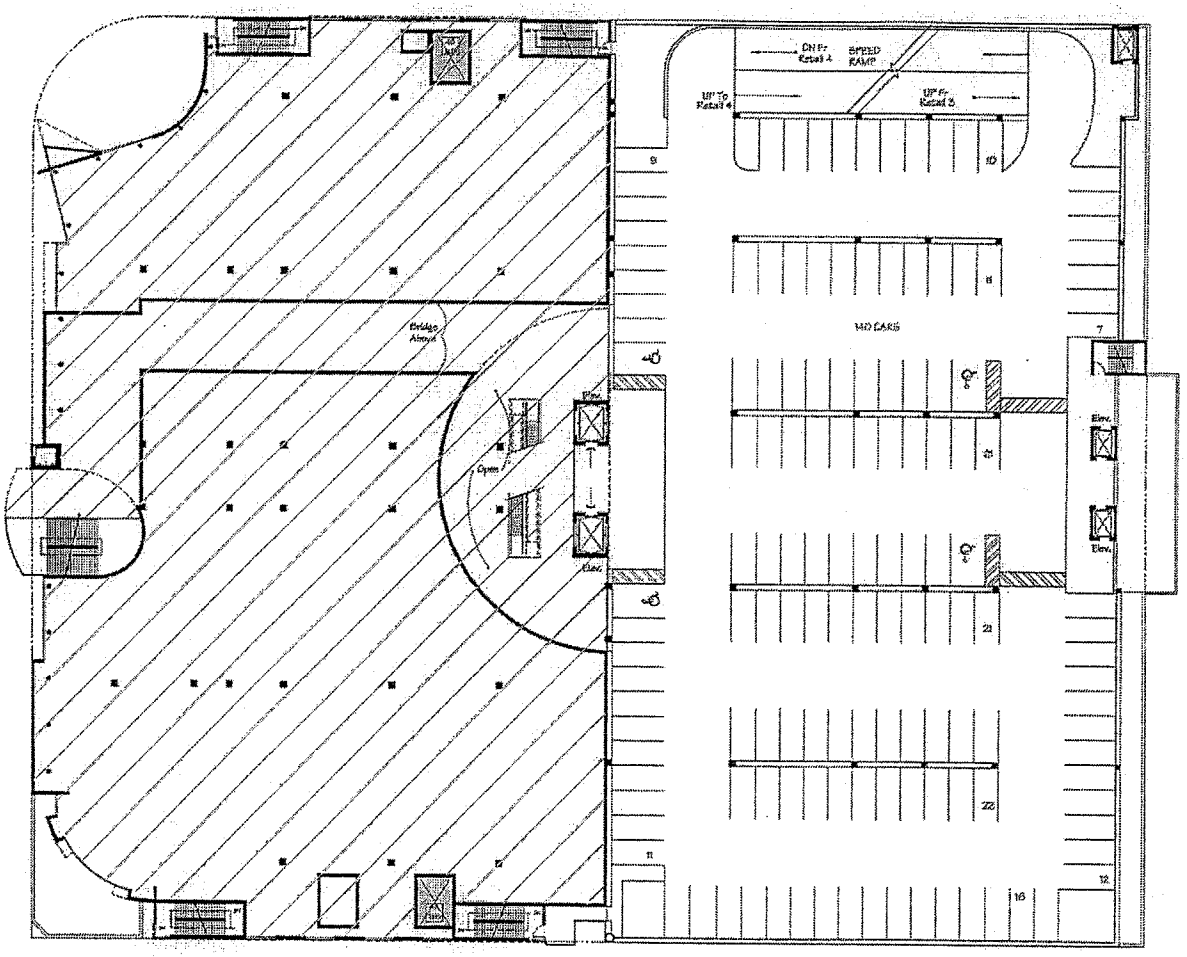
3-RETAIL LEVEL PLAN

date: August 17, 2004

sheet:
A-3

2004/08/16

(6)



3B PARKING LEVEL PLAN
scale: 1"= 20'

0 10 20 40 N

BLUESTONE DEVELOPMENT GROUP

FIFTH ALTON SOUTH BEACH

robin bosco architects & planners,inc

STA ARCHITECTURAL GROUP
3025 NORTH MIAMI AVE, MIAMI, FL 33127
305.571.1811 FAX 305.571.1421

3B-PARKING LEVEL PLAN

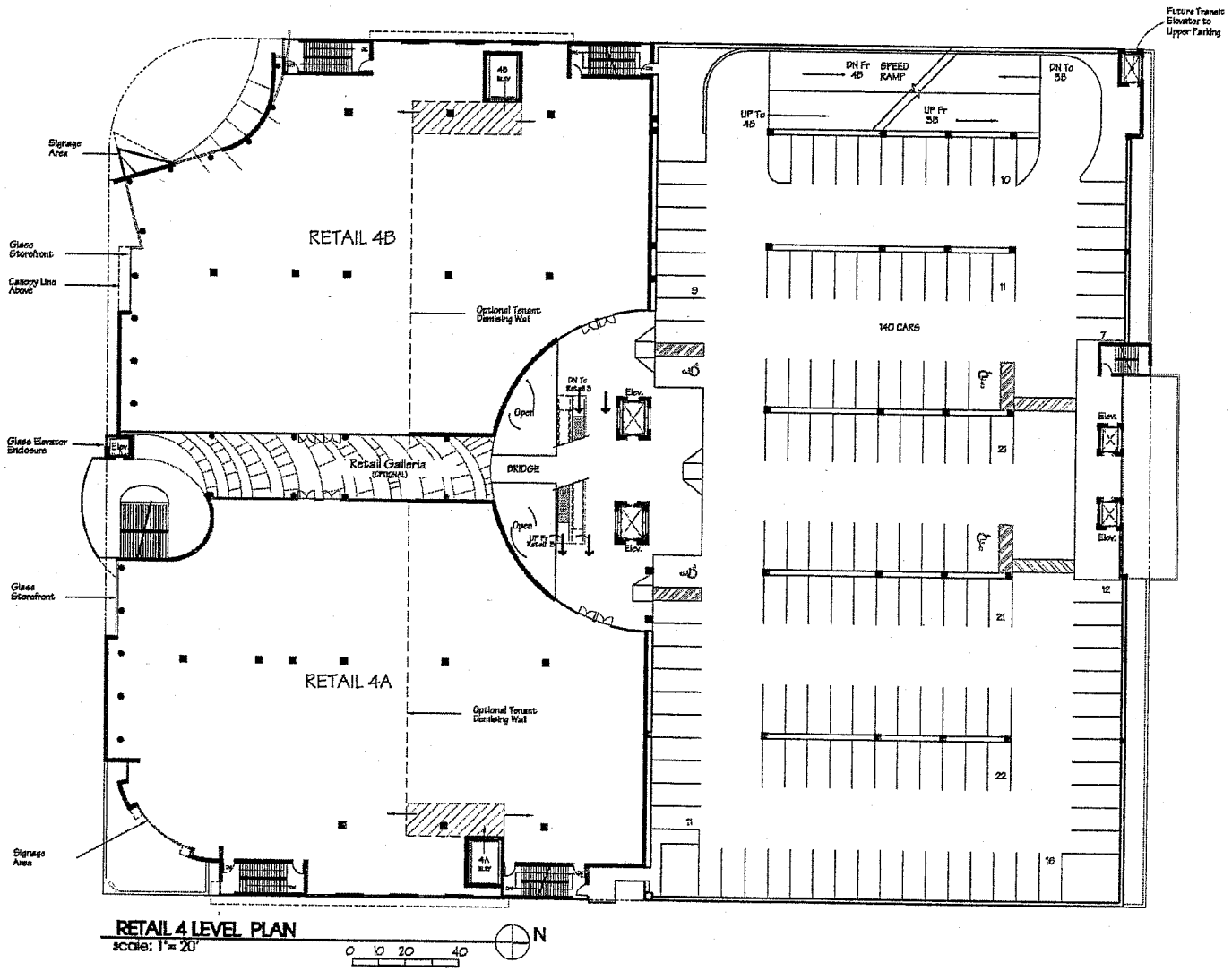
date: August 17, 2004

sheet:

A-4

(7)

2004/09/27



FIFTH ALTON SOUTH BEACH

robin bosco architects & planners,inc.
2937 southwest 27th avenue/suite 207
miami, florida 33133/305-442-2545
fla reg: AA C001766

STA ARCHITECTURAL GROUP
3626 NORTH MIAMI AVE. MIAMI, FL 33127
305.571.1811 FAX 305.571.1821

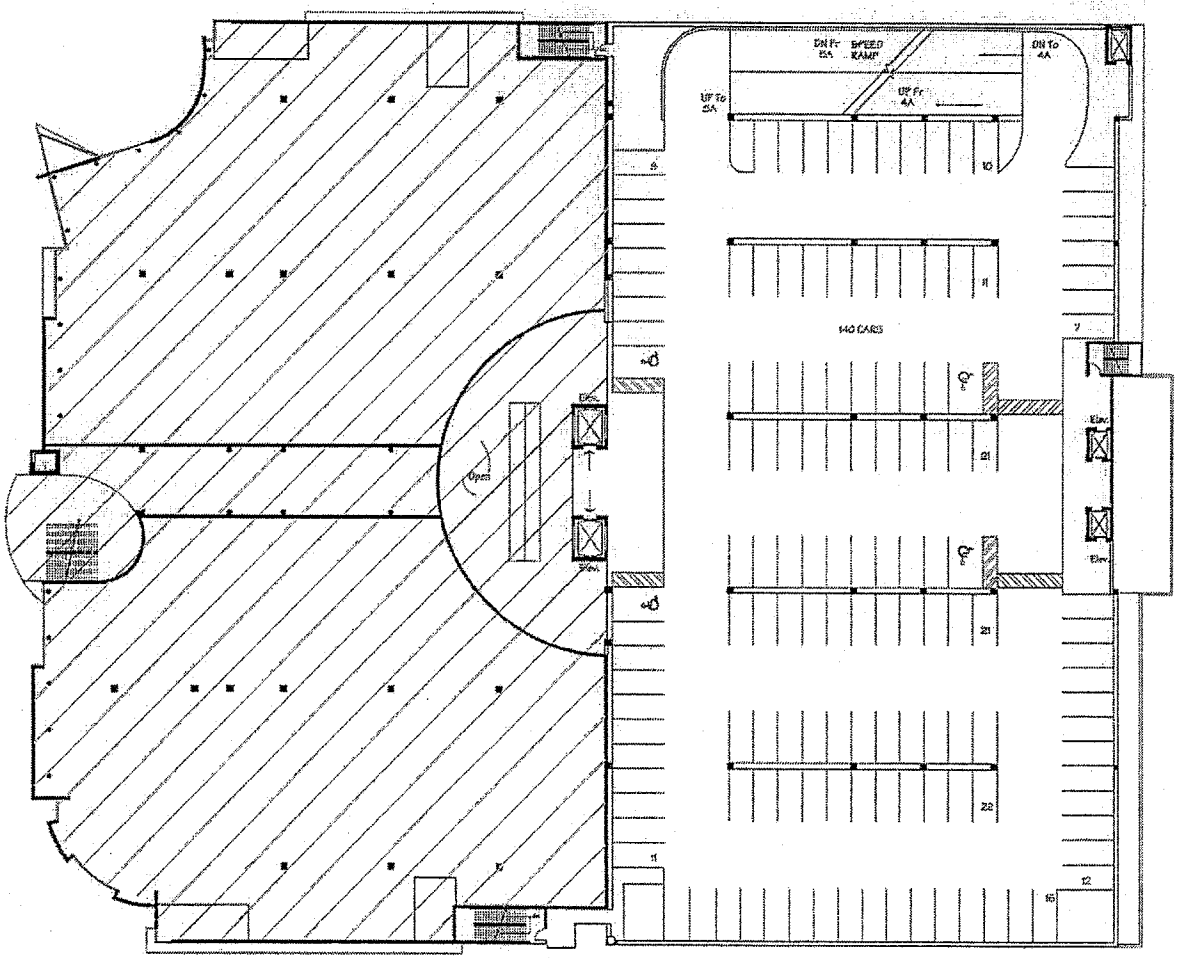
4-RETAIL LEVEL PLAN

date: August 17, 2004

sheet: A-5

2004/08/16

(8)



4B PARKING LEVEL PLAN
scale: 1"=20'
0 10 20 40
N

FIFTH ALTON SOUTH BEACH

robin bosco architects & planners,inc.

STA ARCHITECTURAL GROUP
3626 NORTH MIAMI AVE. MIAMI, FL 33127
305.571.1611 FAX 305.571.1621

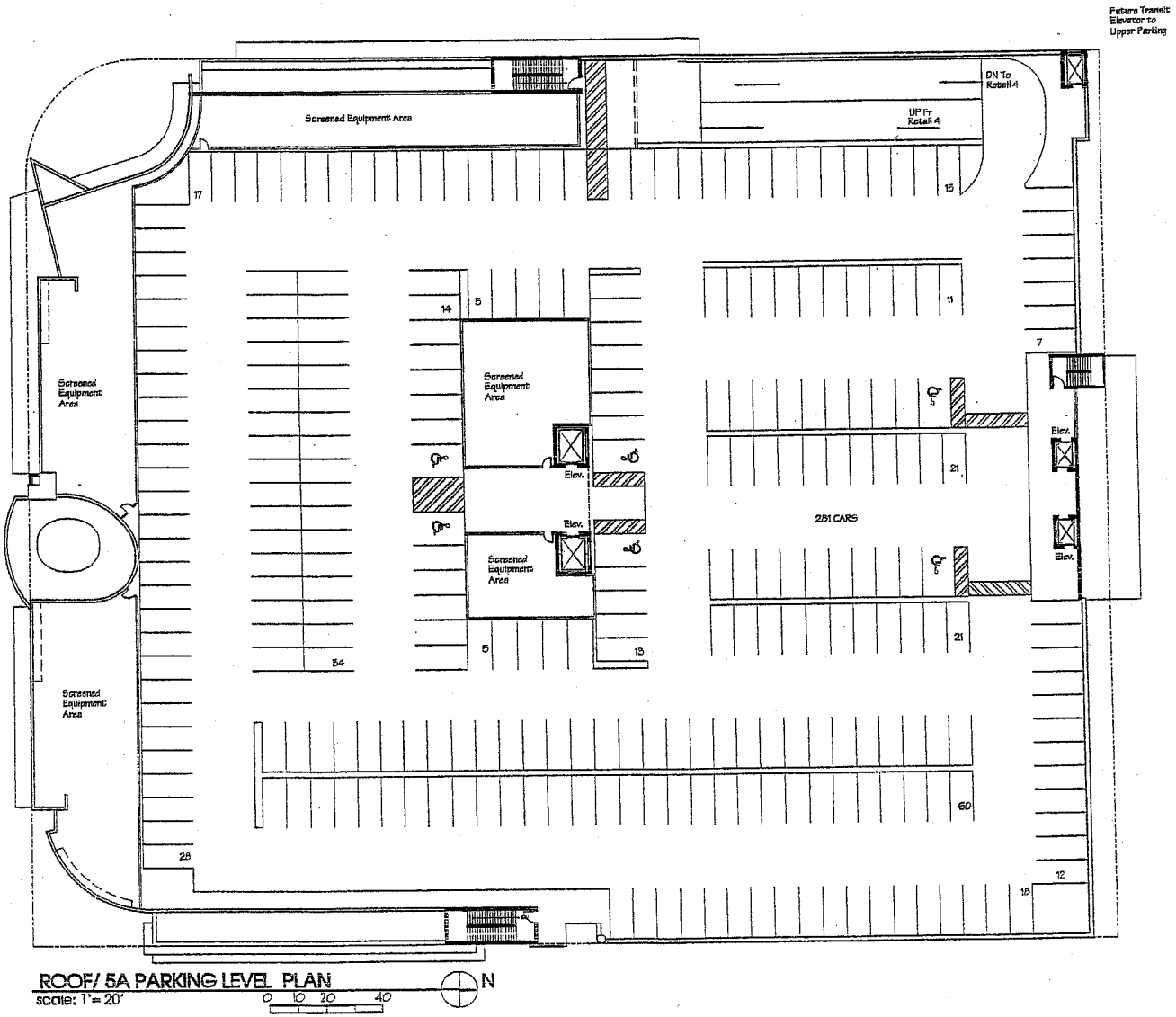
4B-PARKING LEVEL PLAN

date: August 17, 2004

sheet:

A-6

(9)



ROOF/ 5A PARKING LEVEL PLAN
scale: 1"= 20'
0 10 20 40
N

BERKOWITZ DEVELOPMENT GROUP
2665 SOUTH BAYSHORE DRIVE, SUITE 1500
COCONUT GROVE, FLORIDA 33133

FIFTH & ALTON SOUTH BEACH

robin bosco architects & planners,inc.
2937 southwest 27th avenue/suite 207
miami, florida 33133/305-442-2345
fla reg: AA C001768

STA ARCHITECTURAL GROUP
3328 NORTH MIAMI AVE. MIAMI, FL. 33127
305.571.1611 FAX 305.571.1621

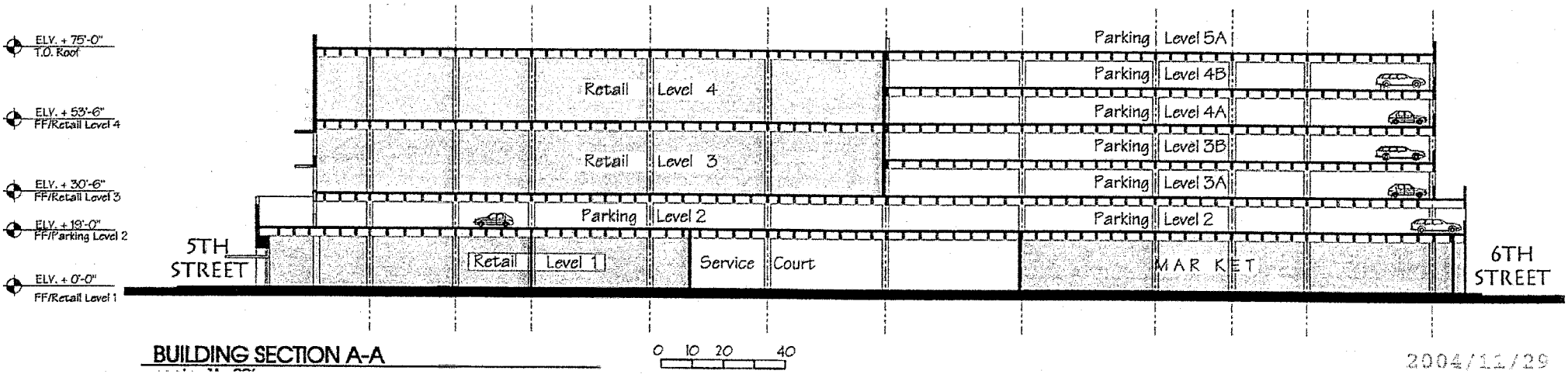
5-PARKING LEVEL PLAN

date: August 17, 2004

sheet:

A-7

(10)



BUILDING SECTION A-A

2004/11/29

EXHIBIT K

LEGAL DESCRIPTION OF ALLEY

That certain 20 foot wide alley, bounded on the east by the west boundary of Lots 1 through 8, Block 104, Ocean Beach Florida Addition No. 3 according to the plat thereof as recorded in Plat Book 2, Page 81 of the Public Records of Miami-Dade County, Florida; bounded on the west by the east line of Lots 9 through 16, of said Block 104; bounded on the north by the north line of Lot 1 of said Block 104 projected westerly; and bounded on the south by the north line of the south 10 feet of Lot 8 of said Block 104 projected westerly.

EXHIBIT L

CITY'S RIGHT OF FIRST OFFER TO PURCHASE PROJECT

Developer hereby agrees that in the event Developer desires to sell all of the Property to an unaffiliated third party, Developer shall first notify City of the material terms pursuant to which Developer so desires to sell (the "Offer"), and City shall have 10 business days after receipt thereof within which to elect in writing whether to pursue a transaction in accordance with the terms of the Offer. The material terms pursuant to which Developer desires to sell shall be the purchase price, terms and conditions and timing for payment of the purchase price, and timing for closing. In the event City timely elects to pursue a transaction in accordance with the terms of the Offer, Developer and City shall, within 30 days thereafter, negotiate the terms of a binding contract that is consistent with the terms of the Offer and otherwise on terms reasonably acceptable to Developer (terms that are customary for similar as-is transactions in the community in which the Property is located, with no representations or warranties except of customary limited matters that cannot be independently verified through other sources, shall be deemed reasonable). In the event City fails to timely elect to pursue a transaction in accordance with the terms of the Offer or, having done so, in the event the parties are unable to agree on the terms of a binding contract in respect of same within said 30 day period, Developer shall be free to pursue an offer from others on the terms set forth in the Offer and otherwise on terms acceptable to Developer. Developer shall notify City of any material changes to the Offer that would make the Offer more beneficial to City and City shall have five business days after receipt thereof to elect to pursue the Offer, as modified, and if City timely so elects, the aforestated provisions regarding negotiation of a binding contract shall be applicable (with the time frame reduced to 15 days, however); provided, however, that, in the event the parties were previously unable to reach a binding contract, the issues that prevented the parties from reaching such a binding contract shall be resolved in favor of Developer in the event City elects to pursue the Offer, as modified.

The foregoing right of first offer shall not be applicable to sales to affiliates of Developer (but after any such transfer shall be binding upon such affiliates), shall be void and of no further force and effect upon default beyond applicable cure period by City under the terms of any binding agreement respecting the Property that is entered into between Developer and City, or affiliates thereof, in furtherance of the Offer, and shall be null and void and of no further force and effect upon recording of any notice of the right of first offer contained herein by or on behalf of City, including the filing of any notice of lis pendens in connection therewith.

The right of first offer contained herein is personal to Developer named herein and its affiliates, on the one hand, and City, on the other hand, and shall be of no further force and effect from and after twelve (12) years from the Effective Date. In amplification of the foregoing, the right of first offer contained herein shall not be binding on any party unaffiliated with Developer named herein that may acquire the Property or any portion thereof, including Developer's lender or a purchaser at foreclosure.

Notices under this right of first offer shall be given in the manner provided for in the Development Agreement to which this right of first offer is an exhibit.

City shall be fully liable to Developer for any and all losses, damages, costs or expenses (including, without limitation, reasonable attorneys' and paralegals' fees and costs at all tribunal levels) incurred by Developer in the event that (a) a cloud on title to Developer's interest in any portion of the Property arises by virtue of the provisions contained herein as a consequence of any act or omission of City, or anyone affiliated with City or claiming by, through or under City, or (b) City, or anyone affiliated with City, wrongfully claims a breach or default by Developer of the right of first offer contained herein which directly or indirectly results in or causes Developer's sale or contemplated sale to any third party to not be completed.

EXHIBIT M

FORM OF DEDICATION DEED FOR TRANSIT FACILITY DEDICATION AREA

Prepared by and return to:
Arnold A. Brown, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
2500 Wachovia Financial Center
Miami, Florida 33131

Part of Folio Nos.:

_____

SPECIAL WARRANTY DEED (WITH RESERVATION OF EASEMENT RIGHTS)

THIS SPECIAL WARRANTY DEED, made as of the __ day of _____, A.D., 200_, by AR&J Sobe, LLC, a Florida limited liability company, party of the first part, whose post office address is c/o Berkowitz Development, 2665 South Bayshore Drive, Suite 1200, Coconut Grove, Florida 33133, hereinafter called the Grantor, to The City of Miami Beach, a Florida municipal corporation, party of the second part, whose post office address is 1700 Convention Center Drive, Miami Beach, Florida 33139, Attn: City Manager, and whose Federal Identification No. is _____, hereinafter called the Grantee (wherever used herein the term "Grantor" and "Grantee" include all the parties to the instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations):

WITNESSETH: That Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain land (the "Property") situate in Miami-Dade County, Florida, viz:

[Insert legal description for Transit Facility Dedication Area]

Subject to:

1. Taxes and assessments for the year 200_ and subsequent years.
2. Zoning and other governmental rules, regulations and ordinances.
3. Easements and restrictions of record, if any, without intent to reimpose or reinstate same hereby.
4. Facts which a current and accurate survey or visual inspection of the property might disclose.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

It is the intent of Grantor, by this instrument, to convey to Grantee the above described property for a public mass transit intermodal stop pedestrian waiting area. It is expressly provided that if and when said use shall be lawfully and permanently discontinued, the title to the above described property shall immediately revert to Grantor, its successors and assigns, and Grantor, its successors and assigns shall have the right to immediately re-possess same.

Grantor **reserves a perpetual easement** for the erection of columns to support the improvements from time to time located above said property, and for utility and drainage facilities within said columns, in locations reasonably approved by Grantee that will not materially adversely interfere with the use of said property for its intended public mass transit intermodal stop pedestrian waiting area. Said easement shall include all rights reasonably necessary to enable Grantor to install, maintain, repair and replace from time to time, the facilities and items that Grantor is permitted to install in, above or below said property.

Grantor shall perform routine day to day maintenance (such as sweeping and cleaning) of the sidewalk, column finishes, tile wall finish, canopy and, to the extent installed at Grantee's cost, the elevator, within or serving the Property (the "Transit Finishes") at Grantor's cost. Grantor shall perform all other maintenance (including obtaining a service contract reasonable acceptable to Grantee for maintenance of the elevator), repairs and replacement of the Transit Finishes at Grantee's cost, based on a budget reasonably approved by Grantee and subject to annual reconciliation. Grantee shall, at its sole cost, install (if desired), maintain, repair and replace (or remove, at Grantee's option) any transit related signage, furniture (such as benches and waste containers) or similar items withing the Property.

AND Grantor hereby covenants with Grantee that Grantor is lawfully seized of said property in fee simple and has good right and lawful authority to sell and convey said property; and hereby warrants the title to said property and will defend the same against the lawful claims of all persons claiming by, through or under said Grantor.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Sign Name:_____
Print Name:_____

Sign Name:_____
Print Name:_____

AR&J Sobe, LLC, a Florida limited liability company, by Berkowitz Limited Partnership, its manager, by Berkowitz, LLC, its general partner

By:_____
Jeffrey L. Berkowitz, Manager

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 200_, by Jeffrey L. Berkowitz, as Manager of Berkowitz, LLC, as general partner of Berkowitz Limited Partnership, as manager of AR&J Sobe, LLC, a Florida limited liability company, in the capacity aforestated; such person is personally known to me or has produced a driver's license as identification.

Sign Name:_____
Print Name:_____
Notary Public
My Commission Expires:
Serial No. (none if blank): _____
[NOTARIAL SEAL]

EXHIBIT N

INTENTIONALLY OMITTED

Exhibit O

Schedule of Estimated Elevator/Bus Stop Costs

Fifth & Alton

Transit Elevator, etc. Costs
Moss and Associates
912 E. Broward Blvd. Suite C
Fort Lauderdale, FL 33301

	SYSTEM	QUANTITY	UNIT	RATE	SUBTOTAL	TOTAL	COST/SF
1	**Elevator Pit & Shaft**						
	Excavation & Backfill	1.00	ls	5,000.00	5,000.00		
	Dewatering	1.00	ls	1,500.00	1,500.00		
	Concrete Work - Pit	12.00	cy	650.00	7,800.00		
	Concrete Work - Shaft	720.00	sf	15.00	10,800.00		
	Masonry	2,600.00	sf	9.00	23,400.00		
	Sump, Sill Angles Pit Ladder, Hoist Beam	1.00	ls	2,500.00	2,500.00		
	Roof Blocking	45.00	lf	20.00	900.00		
	Roofing & Sheet Metal	120.00	sf	12.00	1,440.00		
	Equipment Room Door	1.00	ea	1,000.00	1,000.00		
	Rooftop Glass Enclosure	320.00	sf	50.00	16,000.00		
	Glass Entry	1.00	ea	2,500.00	2,500.00		
	Glass Enclosure	720.00	sf	55.00	39,600.00		
	Tile Flooring	4,320.00	sf	8.00	34,560.00		
	Painting	7.00	lvl	500.00	3,500.00		
	Elevator	7.00	stop	12,000.00	84,000.00		
	Plumbing for Sump	1.00	ls	1,200.00	1,200.00		
	Electrical	1.00	ls	3,000.00	3,000.00		
	Design Fees & Contractor Fees				58,123.45		
						$296,823	
2	**Bus Stop**				-		
	Extra Sidewalk	450.00	sf	3.50	1,575.00		
	Column Finishes	504.00	sf	10.00	5,040.00		
	Tile Wall Finish	1,200.00	sf	8.00	9,600.00		
	Canopy	1,800.00	sf	35.00	63,000.00		
	Design Fees & Contractor Fees				19,288.85		
						$98,504	
						$395,327	

Exhibit "O"